

**RICHLAND COUNTY**  
**SPECIAL CALLED MEETING**  
**AGENDA**

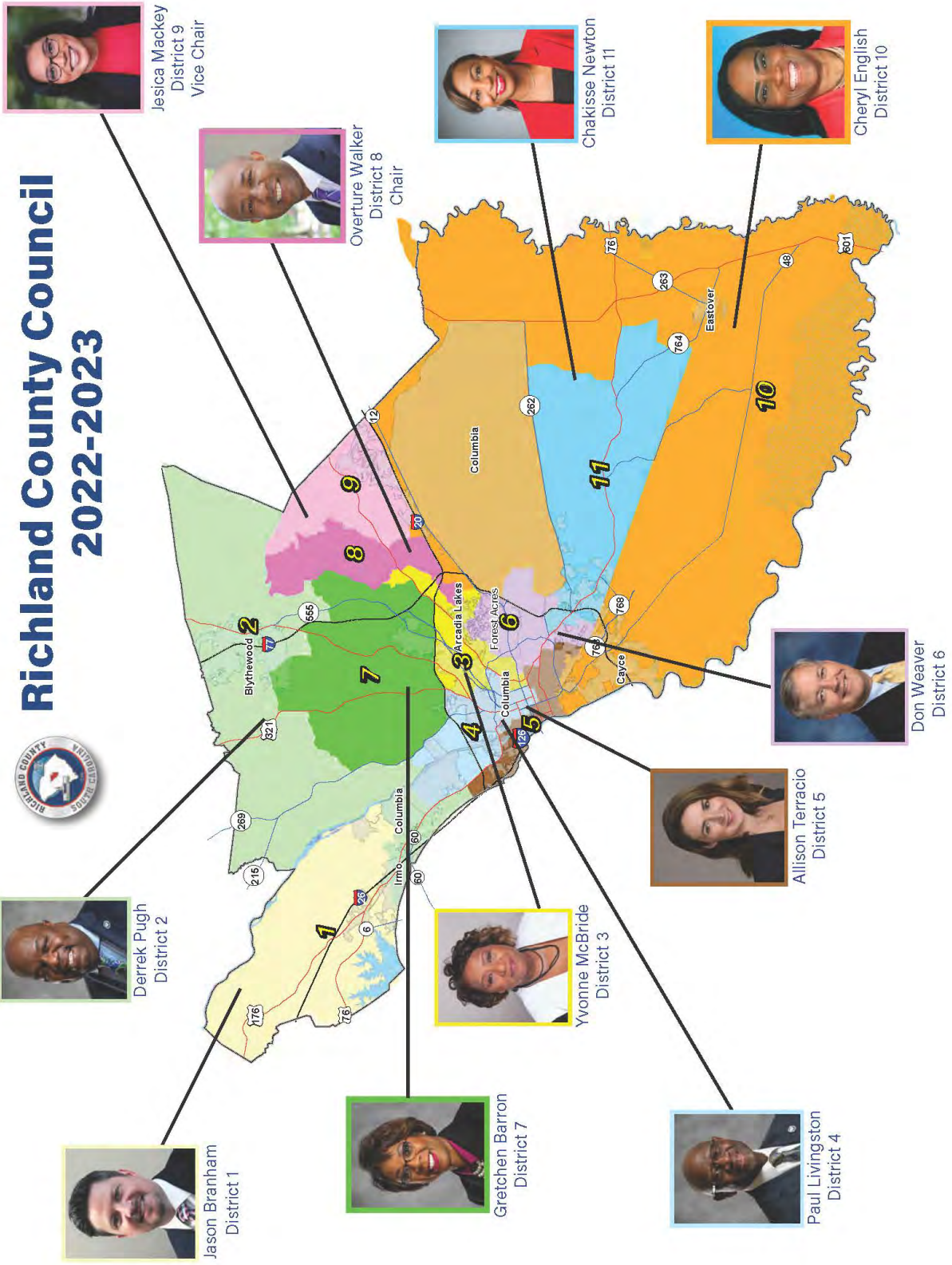


**TUESDAY FEBRUARY 14, 2023**

**6:00 PM**

**COUNCIL CHAMBERS**

# Richland County Council 2022-2023



**Derrek Pugh**  
District 2

**Jason Branham**  
District 1

**Gretchen Barron**  
District 7

**Yvonne McBride**  
District 3

**Allison Terracio**  
District 5

**Paul Livingston**  
District 4

**Don Weaver**  
District 6

**Overture Walker**  
District 8  
Chair

**Chakisse Newton**  
District 11

**Cheryl English**  
District 10

**Jessica Mackey**  
District 9  
Vice Chair



**Richland County  
Special Called Meeting**

**AGENDA**

February 14, 2023 - 6:00 PM  
2020 Hampton Street, Columbia, SC 29204

1. **CALL TO ORDER** The Honorable Overture Walker
  - a. Roll Call
2. **INVOCATION** Pastor Warren Bolton,  
Mt. Zion Baptist Church
3. **PLEDGE OF ALLEGIANCE** The Honorable Overture Walker
4. **APPROVAL OF MINUTES** The Honorable Overture Walker
  - a. Regular Session: February 7, 2023 [PAGES 7-13]
5. **ADOPTION OF AGENDA** The Honorable Overture Walker
6. **PRESENTATION OF PROCLAMATION AND RESOLUTIONS**
  - a. A Proclamation Recognizing the 30th Anniversary of Richland Main Library The Honorable Chakisse Newton
  - b. A Resolution recognizing the American Red Cross and declaring January as Blood Donor Month The Honorable Don Weaver
  - c. A Resolution recognizing Wholespire Richland County and declaring February as American Heart Month The Honorable Gretchen Barron
7. **REPORT OF ATTORNEY FOR EXECUTIVE SESSION ITEMS (Pursuant to SC Code 30-4-70)** Patrick Wright,  
County Attorney

*After Council returns to open session, council may take action on any item, including any subsection of any section, listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.*
8. **CITIZEN'S INPUT** The Honorable Overture Walker
  - a. For Items on the Agenda Not Requiring a Public Hearing
9. **CITIZEN'S INPUT** The Honorable Overture Walker

- a. Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time.)

**10. REPORT OF THE COUNTY ADMINISTRATOR**

Leonardo Brown,  
County Administrator

- a. Updates for Consideration

**11. REPORT OF THE CLERK OF COUNCIL**

Anette Kirylo,  
Clerk to Council

**12. REPORT OF THE CHAIR**

The Honorable Overture Walker

**13. OPEN / CLOSE PUBLIC HEARINGS**

The Honorable Overture Walker

- a. Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project, the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters

**14. THIRD READING ITEMS**

The Honorable Overture Walker

- a. Authorizing the first amendment to that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project; the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters [PAGES 14-54]

**15. SECOND READING ITEMS**

The Honorable Overture Walker

- a. An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation [PAGES 55-58]
- b. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Project Connect to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; authorizing the execution and delivery of a project development

agreement or memorandum of understanding by Richland County, South Carolina; and other related matters [PAGES 59-93]

**16. REPORT OF THE ECONOMIC DEVELOPMENT COMMITTEE**

The Honorable Paul Livingston

- a. Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Subtext; and other related matters [FIRST READING] [PAGES 94-117]

**17. REPORT OF THE TRANSPORTATION AD HOC COMMITTEE**

The Honorable Overture Walker

- a. Blythewood Road Widening Award of Construction [PAGES 118-126]

**18. OTHER ITEMS**

The Honorable Overture Walker

- a. FY23 - District 9 Hospitality Tax Allocations [PAGES 127-128]

1. Richland County Recreation Foundation - \$3,000

**19. EXECUTIVE SESSION**

Patrick Wright,  
County Attorney

*After Council returns to open session, council may take action on any item, including any subsection of any section, listed on an executive session agenda or discussed in an executive session during a properly noticed meeting.*

**20. MOTION PERIOD**

**21. ADJOURNMENT**

The Honorable Overture Walker



Special Accommodations and Interpreter Services Citizens may be present during any of the County's meetings. If requested, the agenda and backup materials will be made available in alternative formats to persons with a disability, as required by Section 202 of the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12132), as amended and the federal rules and regulations adopted in implementation thereof. Any person who requires a disability-related modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may request such modification, accommodation, aid or service by contacting the Clerk of Council's office either in person at 2020 Hampton Street, Columbia, SC, by telephone at (803) 576-2061, or TDD at 803-576-2045 no later than 24 hours prior to the scheduled meeting.



Richland County Council  
REGULAR SESSION  
**MINUTES**  
February 7, 2023 – 6:00 PM  
Council Chambers  
2020 Hampton Street, Columbia, SC 29204

COUNCIL MEMBERS PRESENT: Overture Walker, Chair; Jesica Mackey, Vice-Chair; Derrek Pugh, Jason Branham, Yvonne McBride, Paul Livingston, Allison Terracio, Don Weaver, Gretchen Barron, Cheryl English, and Chakisse Newton

OTHERS PRESENT: Michelle Onley, Kyle Holsclaw, Judy Carter, Michael Byrd, Angela Weathersby, Dale Welch, Michael Maloney, Aric Jensen, Patrick Wright, Leonardo Brown, Anette Kirylo, Sandra Haynes, Tamar Black, Susan O’Cain, Jeff Ruble, Ashiya Myers, Abhijit Deshpande, Crayman Harvey, Stacey Hamm, Chelsea Bennett, Zachary Cavanaugh, Casey White, Quinton Epps, Bill Davis, Jennifer Wladischkin, Sarah Harris, Shirani Fuller, and Lori Thomas.

1. **CALL TO ORDER** – Chairman Overture Walker called the meeting to order at approximately 6:00 PM.
2. **INVOCATION** – The Invocation was led by Pastor Jeff Phillips, Woodfield Park Church.
3. **PLEDGE OF ALLEGIANCE** – The Pledge of Allegiance was led by the Honorable Overture Walker.
4. **APPROVAL OF MINUTES**
  - a. Regular Session: December 6, 2022 – Ms. Mackey moved to approve the minutes as distributed, seconded by Ms. Terracio.  
In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, and Newton  
Opposed: English  
The vote was in favor.
  - b. Special Called Meeting: December 13, 2022 – Ms. Barron noted there were two applicants for the Community Relations Council with similar names (i.e. Shandelle Simmons and Sharrell Simmons). Due to a slight clerical error, the wrong person was appointed. The correct appointee is Sharrell Simmons.  
Mr. Livingston inquired if the person that was erroneously appointed was notified of their appointment.  
Ms. Barron responded both of the applicants were notified that they had been appointed. The Clerk’s Office has spoken to the applicants, as well as the organization. Everyone is fully aware of the error, and are willing to accept the decision of the Rules and Appointments Committee.  
Ms. Barron moved to approve the minutes as amended, seconded by Ms. McBride.  
In Favor: Branham, Pugh, McBride, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
Opposed: Livingston  
The vote was in favor.
  - c. Regular Session: January 3, 2023 – Ms. McBride moved to approve the minutes as distributed, seconded by Ms. Mackey.  
In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The vote in favor was unanimous.

**Regular Session  
February 7, 2023**

5. **ADOPTION OF AGENDA** – Ms. McBride moved to adopt the agenda as published, seconded by Ms. Barron.  
In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton.  
The vote in favor was unanimous.

6. **PRESENTATION OF RESOLUTION**

a. **Resolution Recognizing February as Black History Month** – Ms. Mackey presented a resolution recognizing February as Black History Month.

**POINT OF PERSONAL PRIVILEGE** – Mr. Walker recognized that Ms. Oveta Glover, F.U.N.D.S Inc. CEO, was present to receive the resolution.

Mr. Pugh wished Ms. Glover a Happy Birthday.

7. **REPORT OF THE ATTORNEY FOR EXECUTIVE SESSION (Pursuant to SC Code 30-4-70)** – Mr. Patrick Wright, County Attorney, stated the following items were eligible to receive legal advice and be discussed in Executive Session

a. **Proposed Changes to Council Rules**

b. **Project Connect**

Mr. Livingston moved to go into Executive Session, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

***Council went into Executive Session at approximately 6:17 PM  
and came out at approximately 7:00 PM***

Ms. Terracio moved to come out of Executive Session, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

a. **Proposed Changes to Council Rules** – Ms. Newton moved to accept the County Attorney’s recommendations, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

8. **CITIZENS’ INPUT**

a. **For Items on the Agenda Not Requiring a Public Hearing** – No one signed up to speak.

9. **CITIZENS’ INPUT**

a. **Must Pertain to Richland County Matters Not on the Agenda (Items for which a public hearing is required or a public hearing has been scheduled cannot be addressed at this time.)**

1. Mr. Tommy Stringfellow, Riverbanks Zoo, President and CEO, 500 Wildlife Parkway, Columbia, SC 29210 shared updates regarding the zoo.

10. **REPORT OF THE COUNTY ADMINISTRATOR**

a. **Updates:**

1. **Land Development Code Open House Meetings** – Mr. Leonardo Brown, County Administrator noted the proposed locations for the Land Development Code Open Houses are Ballentine Library, Doko Manor, Arcadia Lakes Town Hall, Lower Richland Library, Eastover Town Hall, and Richland County Offices. Members of Council will be working with staff to propose additional meeting locations.

Mr. Branham requested to confirm there is a Land Development Code Open House meeting on February 8<sup>th</sup> at 6:00 PM at the Ballentine Library.

Mr. Brown responded in the affirmative.

Mr. Branham stated he served as the immediate past Chair of the Planning Commission; therefore, he is paying a lot of attention to this topic. One of the main purposes of the open houses is to share and review the Planning Commission’s recommendations.

**Regular Session  
February 7, 2023**



Mr. Wright reiterated that the Land Development Code text was been approved, and we are awaiting the approval of the maps.

Ms. Newton stated, for the record, future dates for the open houses have not been determined.

2. Richland County Website Project – Mr. Brown indicated this project falls in line with one of the Strategic Plan initiatives. A core committee will be formed to walk through the process, which will involve stakeholders within Richland County Government. Council members are encouraged to be a part of the process.
3. Employee Recognition – Bill Davis, Director, Utilities – Mr. Brown recognized Bill Davis, Utilities Director, on being awarded a lifetime achievement service award from the Water Environmental Association of SC – Capital District.

Ms. Newton noted Mr. Quinton Epps, Conservation Division Manager, was named the Outstanding District Employee by the South Carolina Association of Conservation Districts. One of the accomplishments cited was his being instrumental in creating the mitigation credit program.

- b. Seeking approval for disbursement of CDBG and HOME Federal funds – Mr. Brown stated that the utilization of the CDBG and HOME funds align with the FY22 Annual Action Plan previously approved by County Council in July 2022 and is built into the respective approved budget. The CDBG and HOME budgets were also approved as part of the 5-Year Consolidated Plan. The proposed projects fulfill elements of those plans.

The disbursement of CDBG and HOME federal funds to impact low-to-moderate-income residents throughout unincorporated Richland County are as follows:

1. CDBG Public Service – Eight (8) projects totaling \$337,016 utilizing \$254,096 of FY22 CDBG funds and \$82,920 of uncommitted FY21 CDBG Funds.
2. CDBG Infrastructure – One (1) sewer project totaling \$440,000 awarded to Richland County Public Works.
3. CDBG Owner-Occupied Home Repair – Two (2) CDBG Grants to local non-profits to fund Home Repair Programs totaling \$130,000.
4. HOME Investment Partnership – Housing Revitalization – disbursement of HOME funds to support affordable housing developments totaling \$1,405,356.75 including five (5) new construction units for sale and eight (8) rehabbed rental units.

Ms. Mackey moved to approve the disbursement of CDBG and HOME funds, seconded by Ms. Terracio.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Ms. Terracio.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

Ms. McBride inquired if Council members could be provided a report on how the funds are spent.

Mr. Brown stated we could show how the funds are spent because it has to be reported to HUD.

#### 11. **REPORT OF THE CLERK OF COUNCIL**

- a. SCAC Counties Connect: A Legislative Action Day and Institute of Government – February 22-23, 2023 – Ms. Anette Kirylo, Clerk to Council, reminded Council members about the upcoming Legislative Action Day and Institute of Government classes.
- b. County Council Committee Assignments – Ms. Kirylo stated the 2023 County Council Committee assignments have been provided to Council members. If any of the committees desire to meet, please contact the Clerk's Office.

#### 12. **REPORT OF THE CHAIR** – No report was given.

#### 13. **OPEN/CLOSE PUBLIC HEARINGS**

- a. An Ordinance amending the Richland County Code of Ordinances: Chapter 16, Licenses and Miscellaneous Business Regulations; by the addition of Article VII, Residential Rental Property Registration and Regulations – No one signed up to speak.

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14. **APPROVAL OF CONSENT ITEMS**

- a. An Ordinance amending the Richland County Code of Ordinances; Chapter 16. Licenses and Miscellaneous Business Regulations; by the addition of Article VII. Residential Rental Property Registration and Regulations – Ms. Terracio moved to amend the ordinance by inserting the property address in Section 16-72(a), seconded by Ms. Newton.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Mr. Branham noted that any foreclosing lienholders are going to be required to register under Section 16-72. He inquired if the phrase “is leased or available for lease” is defined in the ordinance.

Mr. Aric Jensen, Assistant County Administrator, replied staff probably should have used the phrase, “offered for lease”.

Mr. Branham inquired if that would include short-term rentals.

Mr. Jensen indicated the ordinance refers to leases of a month or longer; therefore, it would not include short-term rentals. When we address short-term rentals, we will need to create a similar registration system.

Ms. Mackey noted Council has already taken action on this item. If any changes are desired, we would need to reconsider the vote to include those changes.

Ms. Newton moved to reconsider this item, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote was in favor.

Mr. Branham moved to add the language “for a period of 30 days or longer” after the phrase available for lease, to add the property address in Section 16-7-2(a), and replace the term “available” with “offered” in Section 16-7-2(b), seconded by Ms. Newton.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Ms. Newton.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

- b. FY22 Annual Roads Report – Staff requests the County Council receive the attached Annual Roads Report for information and general publication – Mr. Livingston moved to accept the Annual Roads Report for information and general publication, seconded by Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Mr. Pugh moved to reconsider this item, seconded by Mr. Walker.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

Ms. Mackey inquired if this document will be available for viewing on the County’s website.

Mr. Brown responded the document would be uploaded to the County’s website within one business day.

- c. Conservation Commission – Mill Creek Bridge Replacement  
d. Department of Public Works – Road Maintenance Fund Revenue  
e. Animal Services – Intergovernmental Agreement – City of Forest Acres  
f. Animal Services – Intergovernmental Agreement – Town of Irmo  
g. Animal Services – Intergovernmental Agreement – Town of Eastover

Ms. Terracio moved to approve Items 14(c) – 14(g), seconded by Ms. Mackey.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The vote in favor was unanimous.

Ms. Terracio moved to reconsider Items 14(c) – 14(g), seconded by Ms. Barron.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The motion for reconsideration failed.

Ms. Newton thanked staff for noting that the intergovernmental agreements were standard agreements.

**15. THIRD READING ITEM**

- a. An Ordinance authorizing the option and acquisition of certain property located in Richland County; and other matters related thereto – Mr. Livingston moved to approve this item, seconded by Barron

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The vote in favor was unanimous.

Ms. Barron moved to reconsider this item, seconded by Ms. English.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

Ms. Mackey inquired if a public hearing was necessary for this item.

Mr. Wright responded a public hearing is not required for this item.

**16. SECOND READING ITEM**

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Project Viper to provide for payment of a fee-in-lieu of taxes; and other related matters – Mr. Livingston moved to approve this item, Ms. Barron.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The vote in favor was unanimous.

- b. Authorizing the purchase of an existing mitigation bank to secure mitigation credits to support economic development projects; and other matters related thereto – Ms. Barron moved to approve this item, seconded by Ms. English.

Ms. Mackey noted, for the record, she had additional questions about management and operations. She has shared those questions with staff and feedback on those questions will be provided prior to Third Reading.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton  
The vote in favor was unanimous.

**17. REPORT OF DEVELOPMENT AND SERVICES COMMITTEE**

- a. An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation [FIRST READING] – Mr. Pugh stated the committee recommended approval of this item. He noted he is aware some Council members still have questions about the ordinance.

Mr. Wright indicated since this item came out of committee there were recommended changes that are not reflected in the agenda packet. He will provide a red-lined version prior to Second Reading.

Ms. Newton stated, as part of those recommended changes, she would like a specific timeframe to be provided for the three (3) offenses in Section 18-7(f).

Ms. Terracio requested public outreach to educate the residents regarding this ordinance.

Mr. Branham noted there is a typographical error in Section 18-7(b). He inquired if there would be exceptions made as it relates to Section 18-7(c)(4). In addition, he inquired about the intent of Section 18-7(g).

Ms. Mackey inquired if the recommendation from the committee is based upon the draft ordinance provided.

Mr. Pugh responded in the affirmative.

Mr. Walker commended the committee on the time and effort they put into drafting the proposed ordinance. He indicated he would like to see an ordinance that has more teeth to it. He would like more accountability as it relates to the penalties.

Mr. Pugh stated he understands the concerns of his colleagues, but they have consulted with those who will be enforcing the ordinance, and these were their recommendations without stepping on the rights of the citizens.

Mr. Walker requested that the proposed changes be included in the Second Reading ordinance.

Ms. Mackey inquired who is making the recommendations.

Mr. Wright responded there were suggestions from committee members, as well as recommendations from the stakeholders, which were not included in tonight's agenda documentation.

Ms. Barron noted it is disappointing that the document the committee worked on is not before them.

Mr. Livingston suggested approving this item by title only and bringing back the full document at Second Reading.

Mr. Pugh inquired if we could defer this item until the updated ordinance is provided.

Mr. Wright indicated he does not think it is necessary to defer the item.

Mr. Pugh encouraged his colleagues to attend committee meetings when there are hot topics, such as this.

Ms. Barron inquired if we are voting on the committee's recommendation or Mr. Livingston's suggestion of approving the ordinance by title only.

Mr. Pugh his preference would be to approve it by title only.

Ms. Mackey inquired if the committee Chair has the ability to change the committee's recommendation when the item comes to Council, or would a motion need to be made.

Mr. Wright responded a motion would need to be made to change the committee's recommendation.

Mr. Pugh moved to approve this item by title only and have the full ordinance presented at Second Reading, seconded by Mr. Livingston.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Barron, Mackey, English, and Newton

Opposed: Weaver and Walker

The vote was in favor.

#### **REPORT OF THE ECONOMIC DEVELOPMENT COMMITTEE**

18.

- a. Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Project Connect to provide for payment of a fee-in-lieu of taxes; authorizing the execution and delivery of a project development agreement or memorandum of understanding by Richland County, South Carolina; and other related matters [FIRST READING BY TITLE ONLY] – Mr. Livingston stated the committee recommended approval of this item.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

#### **REPORT OF THE RULES AND APPOINTMENTS COMMITTEE**

19.

- a. Midlands Workforce Development Board – Ten (10) Vacancies (ONE applicant must have a background in Apprenticeship, THREE applicants must have a background in Education [ONE Midlands Technical College, ONE Adult Education, and ONE Literacy], FIVE applicants must be from the Private Sector and ONE applicant must be nominated and approved by the SC Department of Employment & Workforce) – Ms. Barron stated the committee recommended appointing Ms. Rosalind Harps, Ms. Brittany Singleton, Ms. Maria Calloway, Mr. J. Michael Harpe, and re-appointing Mr. Tim Miller and Ms. Amy Scully.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton.

The vote in favor was unanimous.

Ms. Barron noted the four (4) remaining vacancies were re-advertised.

20. **OTHER ITEMS**

- a. A Resolution to appoint and commission Sandra Dickerson as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County
- b. A Resolution to appoint and commission Spencer G. Robertson as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County
- c. A Resolution to appoint and commission Jermain Carr as a Code Enforcement Officer for the proper security, general welfare, and convenience of Richland County

Mr. Livingston moved to approve Items 20(a) – 20(c), seconded by Ms. Terracio.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

Ms. English moved to reconsider Items 20(a) – 20(c), seconded by Ms. Barron.

Ms. Barron made a substitute motion to reconsider Item 19(a)(1) and Item 20(a) – 20(c), seconded by Ms. Newton.

Opposed: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The motion for reconsideration failed.

21. **EXECUTIVE SESSION** – There were no additional Executive Session items.

22. **MOTION PERIOD** – There were not motions submitted.

23. **ADJOURNMENT** – Ms. English moved to adjourn the meeting, seconded by Ms. Terracio.

In Favor: Branham, Pugh, McBride, Livingston, Terracio, Weaver, Barron, Walker, Mackey, English, and Newton

The vote in favor was unanimous.

The meeting adjourned at approximately 8:04 PM.

## Richland County Council Request for Action

**Subject:**

Authorizing the first amendment of that certain fee agreement by and between Richland County, South Carolina and Eastover Solar, LLC., relating to, without limitation, the further investment of the project, the increase of the phase termination date, and an update to the fee payment schedule and amount and other related matters

**Notes:**

First Reading: December 6, 2022

Second Reading: December 13, 2022

Third Reading: February 14, 2023 {Tentative}

Public Hearing: February 14, 2023

**STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_**

**AN ORDINANCE AUTHORIZING THE FIRST AMENDMENT OF THAT CERTAIN FEE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND EASTOVER SOLAR, LLC., RELATING TO, WITHOUT LIMITATION, THE FURTHER INVESTMENT OF THE PROJECT, THE INCREASE OF THE PHASE TERMINATION DATE, AND AN UPDATE TO THE FEE PAYMENT SCHEDULE AND AMOUNT AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (the "County"), acting by and through its County Council (the "County Council"), is authorized and empowered under and pursuant to the provisions of the South Carolina Constitution (the "Constitution"), the Code of Laws of South Carolina, 1976, as amended (the "Code"), and the case law of the courts of the State of South Carolina, to offer and provide certain privileges, benefits, and incentives to prospective industries as inducements for economic development within the County; and

WHEREAS, the County is authorized and empowered under and pursuant to the provisions of Title 12, Chapter 44 of the Code (the "Act") to enter into certain agreements with any industry that constructs, operates, maintains, and improves certain properties (which constitute "projects" as defined in the Act); and

WHEREAS, through employment of the powers granted by the Act, the County is empowered to promote the economic and industrial development of the State of South Carolina (the "State") and develop its trade by inducing manufacturing and commercial enterprises to locate and remain in the State and thus use and employ the manpower, agricultural products, and natural resources of the State and benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally by providing for the exemption of such project from property taxes and for the payment of a fee in lieu of property taxes (a "fee agreement," as defined in the Act); and

WHEREAS, Eastover Solar, LLC, a South Carolina limited liability company (the "Company"), plans to cause the construction of and operate a solar power generation facility located in the County (as defined in the Fee Agreement, as that term is defined below, the "Project"); and

WHEREAS, the County and the Company entered into that certain Fee Agreement, effective as of May 21, 2019 (the "Fee Agreement") by which there was created a fee-in-lieu-of-tax arrangement with respect to certain property leased and owned by the Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$77 million (the "Contract Minimum Investment Requirement" and as defined in the Fee

Agreement) at the Project by the end of the Investment Period (as defined in the Fee Agreement); and

WHEREAS, the Company has requested the County to amend the incentive terms in the Fee Agreement to authorize (i) the increase in the Contract Minimum Investment Requirement to \$113 million; (ii) the increase in the Phase Termination Date (as defined in the Fee Agreement) of the Fee Agreement from 30 years to 40 years; and (iii) update of Exhibit D to the Fee Agreement to reflect an updated FILOT payment schedule for the Project (together, the “Revised Incentives Terms”); and

WHEREAS, the County and the Company now desire to amend the Fee Agreement to memorialize such Revised Incentive Terms; and

WHEREAS, all capitalized terms not specifically defined herein, shall have the meaning as defined in the Fee Agreement, and if not defined therein shall have the meaning as defined in the Act; and

WHEREAS, the County Council has caused to be prepared and presented to this meeting the form of First Amendment of Fee Agreement (the “Amendment”) by and between the County and the Company memorializing the Revised Incentives Terms; and

WHEREAS, the County desires to approve and authorize the Revised Incentives Terms, and it appears that the Amendment now before this meeting is an appropriate instrument to be executed and delivered by the County for the purposes intended.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNTY COUNCIL OF RICHLAND COUNTY, SOUTH CAROLINA, IN MEETING DULY ASSEMBLED:

Section 1. Statutory Findings and Determinations. The County hereby finds and determines that the Revised Incentives Terms would directly and substantially benefit the general public welfare of the County by inducing the Company to make further investment in the County, thereby providing for the increase of the ad valorem tax base of the County, and service, employment or other public benefits not otherwise provided locally; that the Revised Incentives Terms gives rise to no pecuniary liability of the County or incorporated municipality or a charge against the general credit or taxing power of either; that the purposes to be accomplished by the Revised Incentives Terms, i.e., economic development, and addition to the tax base of the County, are proper governmental and public purposes; and the inducement of continued utilization of the Project which is located in the County and State are of paramount importance and the benefits of the Revised Incentives Terms will be greater than the costs.

Section 2. Update of the Contract Minimum Investment Requirement. The Contract Minimum Investment Requirement in the Project required of the Company under Section 1.1 of the Fee Agreement shall be increased to \$113 million.

Section 3. Update of the Phase Termination Date. The Phase Termination Date of the Project listed in Section 1.1 of the Fee Agreement shall be updated to state the following:



“means, with respect to each Phase, the last day of the property tax year which is the 39th year following the first property tax year in which the Phase is in service.”

Section 4. Update to Exhibit D of the Fee Agreement: Exhibit D of the Fee Agreement as described in Section 5.1 of the Fee Agreement shall be updated to reflect the new illustration attached to the Amendment as Exhibit B.

Section 5. Approval of Amendment. The Amendment is approved as follows:

(a) The form, terms, and provisions of the Amendment presented to this meeting and filed with the Clerk to County Council (the “Clerk”) are approved and all of the terms, provisions, and conditions of the Amendment are incorporated by reference. The Chairman of the County Council (the “Chairman”) and the Clerk are authorized, empowered, and directed to execute, acknowledge, and deliver the Amendment in the name of the County. The Chairman and the Clerk are further authorized, empowered, and directed to cause the Amendment to be delivered to the Company.

(b) The Amendment to be executed on behalf of the County shall be in substantially the form now before the County Council and shall include only changes that are approved by the County officials executing the Amendment. The County officials shall first consult counsel to the County (the “County Attorney”) with respect to any changes to the Amendment. The execution of the Amendment by the County officials shall constitute conclusive evidence that they have approved all changes to or revisions of the Amendment now before this meeting.

(c) If under the Amendment or the Act any future actions of the Company (including, without limitation, the supplementation of the exhibits thereto and/or any assignments of the Project) require the approval of the County, such approval can be given on behalf of the County by the Chairman or the Richland County Administrator (the “County Administrator”) upon affirmative resolution of the County Council to the extent permitted by law. The County officials shall first consult the County Attorney with respect to such approval. The execution of a written approval by County officials shall constitute conclusive evidence that the County has approved the respective actions of the Company.

Section 6. Execution of Document. The Chairman, the County Administrator, and the Clerk are each authorized and directed to do all things reasonably necessary to effect the execution and delivery of the Amendment and the County’s performance of its obligations under the Amendment.

Section 7. Severability. The provisions of this Ordinance are declared to be separable. If any section, phrase, or provision shall be declared by a court of competent jurisdiction to be invalid or unenforceable for any reason, the remaining sections, phrases, and provisions of the Ordinance shall remain valid.

Section 8.     Repeal of Conflicting Ordinances. All orders, resolutions, and other ordinances in conflict with this Ordinance are repealed to the extent of such conflict.

Section 9.     Effective Date of Ordinance. This Ordinance shall take effect immediately upon third reading of the County Council.

[signatures on following page]

RICHLAND COUNTY, SOUTH CAROLINA

By: \_\_\_\_\_  
Chair, Richland County Council

(SEAL)

Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2023

\_\_\_\_\_  
Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY’S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading:           December 6, 2022  
Second Reading:       December 13, 2022  
Public Hearing:           February 14, 2023  
Third Reading:           February 14, 2023



## FIRST AMENDMENT OF FEE AGREEMENT

This First Amendment of Fee Agreement (the “Amendment”) is made and entered into as of \_\_\_\_\_, 2023 by and between RICHLAND COUNTY, SOUTH CAROLINA (the “County”), a body politic and corporate and a political subdivision of the State of South Carolina and EASTOVER SOLAR, LLC (the “Company”).

WHEREAS, all capitalized terms not specifically defined herein shall have the meaning as defined in the Fee Agreement (as that term is defined below), and if not defined therein shall have the meaning as defined in Title 12, Chapter 44 of the Code of Laws of South Carolina 1976, as amended (the “Act”); and

WHEREAS, the Company plans to cause the construction of and operate a solar power generation facility located in the County (as defined in the Fee Agreement, the “Project”); and

WHEREAS, the County and Company executed and entered into that certain Fee Agreement effective as of May 21, 2019 (the “Fee Agreement”), a copy of which is attached hereto as Exhibit A, by which there was created a fee-in-lieu-of-tax arrangement with respect to real and personal property owned by the Company and located at the Project; and

WHEREAS, pursuant to the Fee Agreement, the Company committed to invest at least \$77 million (the “Contract Minimum Investment Requirement” and as defined in the Fee Agreement) at the Project by the end of the Investment Period (as defined in the Fee Agreement); and

WHEREAS, the Company has requested the County to amend the incentive terms in the Fee Agreement to authorize (i) the increase in the Contract Minimum Investment Requirement to \$113 million; (ii) the increase in the Phase Termination Date (as defined in the Fee Agreement) of the Fee Agreement from 30 years to 40 years; and (iii) update of Exhibit D to the Fee Agreement to reflect an updated FILOT payment schedule for the Project; and

WHEREAS, the laws of the State of South Carolina and Section 10.6 of the Fee Agreement permit the parties to amend the Fee Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged, the County and the Company agree as follows:

1. Update of the Contract Minimum Investment Requirement. The Contract Minimum Investment Requirement in the Project required of the Company under Section 1.1 of the Fee Agreement shall be increased to \$113 million.
2. Update of the Phase Termination Date. The Phase Termination Date of the Project listed in Section 1.1 of the Fee Agreement shall be updated to state the following:

“means, with respect to each Phase, the last day of the property tax year which is the 39<sup>th</sup> year following the first property tax year in which the Phase is in service.”

3. Update to Exhibit D of the Fee Agreement: Exhibit D of the Fee Agreement as described in Section 5.1 of the Fee Agreement shall be updated to reflect the new illustration attached to the Amendment as Exhibit B.
4. County Expenses. The Company shall reimburse the County for reasonable and necessary expenses, including, reasonable and necessary attorneys’ fees, related to reviewing and negotiation of the Amendment and related documents, in an amount not to exceed \$3,000. The Company shall reimburse the County no more than thirty (30) days after receiving an invoice from the County, or its agents, in which the amount and the general nature of the expense is provided.
5. Severability. If any term, provision, or any portion of this Amendment shall to any extent and for any reason be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this agreement shall not be affected thereby and shall nevertheless remain in full force and effect, and each term and/or provision of this agreement shall be valid and enforceable to the fullest extent permitted by the law.
6. Remaining Terms and Provisions. Except as expressly amended hereby, the terms and provisions of the Fee Agreement shall remain unchanged and in full force and effect. In the event of conflict between the terms of the Fee Agreement and the terms of this Amendment, the Amendment terms shall apply.

IN WITNESS WHEREOF, the County has executed this Amendment by causing its name to be hereunto subscribed by the Chairman of the County Council for the County and attested by the Clerk to the County Council, and the Company has executed this Amendment by causing its corporate name to be hereunto subscribed by its authorized representative, all being done as of the day and year first written above.

**RICHLAND COUNTY, SOUTH CAROLINA**

By: \_\_\_\_\_  
Overture Walker, Chairman, County  
Council of  
Richland County, South Carolina

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Clerk to County Council of Richland County,  
South Carolina

**EASTOVER SOLAR, LLC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

EXHIBIT A

Fee Agreement



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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT**

**BETWEEN**

**EASTOVER SOLAR LLC**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF MAY 21, 2019**

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**SUMMARY OF CONTENTS OF  
FEE-IN-LIEU OF *AD VALOREM* TAXES AND  
INCENTIVE AGREEMENT (“FEE AGREEMENT”)**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

PROVISION	BRIEF DESCRIPTION	SECTION REFERENCE
<b>Sponsor Name</b>	<b>Eastover Solar LLC</b>	Section 1.1, Page 3
<b>Project Location</b>		
<b>Tax Map No.</b>	R39200-02-03	Exhibit A
	R39300-02-02 (portion)	
	R39300-02-06 (portion)	
	R39300-02-05 (portion)	
<b>FILOT</b>		
• Phase Exemption Period	30 years	Section 1.1, Page 3
• Contract Minimum Investment Requirement	\$77,000,000	Section 1.1, Page 2
• Investment Period	5 years	Section 1.1, Page 3
• Assessment Ratio	6%	Section 4.1, Page 6
• Millage Rate	469.0 mills [(lowest allowable)]	Section 4.1, Page 6
• Fixed or Five-Year Adjustable Millage	Fixed	Section 4.1, Page 6
• Claw Back Information	<b>Terminate and claw back if investment does not reach the Standard FILOT Act Minimum Investment Requirement; differential payment due if investment does not reach NPV FILOT Act Minimum Investment Requirement</b>	Section 6.1, Page 8
<b>Multicounty Park</b>	I-77 Corridor Regional Industrial Park	Section 1.1, Page 3
<b>Special Source Credit</b>	77% against each annual FILOT Payment	Section 5.2, Page
• Brief Description	See above	
• Credit Term	See above	
• Clawback Information		
<b>Other Information</b>	FILOT Payment calculation to be made using net present value FILOT terms pursuant to Section 12-44-50(A)(2) of the FILOT Act based net present value calculations	Section 4.1, Page 7

**FEE-IN-LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT**

THIS FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of May 21, 2019 between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County, and Eastover Solar LLC, a limited liability company organized and existing under the laws of the State of Delaware and previously identified as Project ES (“*Sponsor*”).

WITNESSETH:

(a) The County is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“*FILOT Act*”) and Title 4, Chapter 1, Code of Laws of South Carolina 1976, as amended (the “*MCIP Act*”) to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“*South Carolina*” or “*State*”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the *FILOT Act*, that provides for the payment of a fee-in-lieu of ad valorem tax (“*FILOT Payments*”) with respect to economic development property, as defined below;

(b) Section 4-1-175 of the Code authorizes the County to provide special source revenue credits (“*Special Source Credits*”) against payments in lieu of taxes for purposes of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(b) The Sponsor has committed to locate or expand certain facilities to be operated as a solar-powered electric generating facility (“*Project*”) in the County, consisting of taxable investment in real and personal property of not less than \$77,000,000;

(c) By an ordinance enacted on May 21, 2019 County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a *FILOT* and certain Special Source Credits as an inducement for the Sponsor to locate or expand the Project in the County.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties agree as follows:

**ARTICLE I  
DEFINITIONS**

**Section 1.1. Terms.** The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the *FILOT Payments*, *Special Source Credits*, or other terms and provisions set forth in this Fee Agreement brought by third parties or the Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Affiliate**” shall mean any corporation, limited liability company, partnership or other Person or entity which now or hereafter owns all or part of the Sponsor or any Sponsor Affiliate, as the case may be, or which is now or hereafter owned in whole or in part by the Sponsor or any Sponsor Affiliate, as the case may be, or by any partner, shareholder or owner of the Sponsor or any Sponsor Affiliate, as the case may be, and shall also include any subsidiary, affiliate or other Person, individual, or entity who now or hereafter bears a relationship to the Sponsor or any Sponsor Affiliate, as the case may be, as described in Section 267(b) of the Internal Revenue Code.

“**Code**” means the Code of Laws of South Carolina 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which the initial Economic Development Property comprising the Project is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the parties agree that, to the maximum extent permitted by the FILOT Act, the Commencement Date shall be no later than December 31, 2022, though the Sponsor presently anticipates that the Commencement Date will be December 31, 2021.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property in the Project of not less than \$77,000,000 within the Investment Period.

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

“**Department**” means the South Carolina Department of Revenue, or any successor entity thereto.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in **Section 4.1(a)(i)** of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to **Section 4.3** of this Fee Agreement; (ii) a casualty as described in **Section 4.4** of this Fee Agreement; or (iii) a condemnation as described in **Section 4.5** of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property comprising the Project placed in service within the Investment Period that (i) satisfy the conditions of classification as economic development property under the FILOT Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions now or hereafter acquired for use on or about the Land.

“**Event of Default**” means any event of default specified in **Section 7.1** of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu of *Ad Valorem* Taxes and Incentive Agreement, as originally executed and as may be supplemented or amended as permitted herein.

“**FILOT Act**” means Title 12, Chapter 44 of the Code, as amended.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in **Section 4.1** of this Fee Agreement.

**“Final Phase”** means the Economic Development Property placed in service during the last year of the Investment Period.

**“Final Termination Date”** means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2049, the Final Termination Date is expected to be January 15, 2051, which is the due date of the last FILOT Payment with respect to the Final Phase.

**“Improvements”** means all improvements now or hereafter constructed on the Land, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

**“Infrastructure”** means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

**“Investment Period”** means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as may be extended pursuant to Section 12-44-30(13) of the FILOT Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2026.

**“Land”** means the land that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

**“MCIP Act”** means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

**“Multicounty Park”** means the I-77 Corridor Regional Industrial Park governed by the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of September 1, 2018, between the County and Fairfield County, South Carolina, as may be amended.

**“NPV FILOT Minimum Investment Requirement”** means an investment of at least \$45,000,000 in the Project within the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending five years after the Commencement Date, as set forth in Section 12-44-50(A)(3).

**“Net FILOT Payment”** means the FILOT Payment net of the Special Source Credit.

**“Person”** shall mean and include any individual, association, unincorporated organization, corporation, partnership, limited liability company, joint venture, or government or agency or political subdivision thereof.

**“Phase”** means the Economic Development Property placed in service during a particular year of the Investment Period.

**“Phase Exemption Period”** means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

**“Phase Termination Date”** means, with respect to each Phase, the last day of the property tax year which is the 29<sup>th</sup> year following the first property tax year in which the Phase is placed in service.

“**Project**” means all the Equipment, Improvements, and the Land in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County, only to the extent placed in service during the Investment Period.

“**Removed Components**” means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to **Section 4.3** of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to **Section 4.4(c)** or **Section 4.5(b)(iii)** of this Fee Agreement.

“**Replacement Property**” means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

“**South Carolina Freedom of Information Act**” shall mean Title 30, Chapter 4 of the Code.

“**Special Source Credits**” means the special source revenue credits provided to the Sponsor pursuant to Section 4-1-175 of the MCIP Act and **Section 5.1** of this Fee Agreement, with respect to the Infrastructure. Special Source Credits are to be used for the payment of, or reimbursement for, Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Sponsor**” means Eastover Solar LLC, a limited liability company organized and existing under the laws of the State of Delaware and a company previously identified as Project ES, and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

“**Sponsor Affiliate**” means an entity that participates in the investment at the Project and, following receipt of the County’s approval pursuant to **Section 9.1** of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

“**Standard FILOT Act Minimum Investment Requirement**” means an investment of at least \$2,500,000 in Economic Development Property as of the day ending five years after the Commencement Date, as set forth in Section 12-44-30(14) of the FILOT Act, which investment amount shall be calculated in accordance with, and subject to, Section 12-44-130 of the FILOT Act.

“**State**” means the State of South Carolina.

“**Term**” means the term of this Fee Agreement, as set forth in **Section 10.10(a)** of this Fee Agreement.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.



**ARTICLE II  
REPRESENTATIONS AND WARRANTIES**

**Section 2.1. *Representations and Warranties of the County.*** The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The FILOT Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on March 5, 2019 by adopting an Inducement Resolution, as defined in the FILOT Act on March 5, 2019.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located, or will take all reasonable action to locate, the Project in the Multicounty Park on terms, and for a duration, sufficient to facilitate the County's provisions of the Special Source Credits set forth in this Fee Agreement.

**Section 2.2. *Representations and Warranties of the Sponsor.*** The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a solar-powered electric generating facility and for such other purposes that the FILOT Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement within the Investment Period.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT, Special Source Credits, and other incentives provided by this Fee Agreement has been an inducement for the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT, Special Source Credits, and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

### **ARTICLE III THE PROJECT**

**Section 3.1. *The Project.*** The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement within the Investment Period. The parties hereto agree, to the maximum extent permitted by the FILOT Act, that the first Phase of the Project is anticipated to be placed in service during the calendar year ending December 31, 2021. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met in the Investment Period, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

**Section 3.2 *Leased Property.*** To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

#### **Section 3.3. *Filings and Reports.***

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing the first January 31 following the Commencement Date, the Sponsor shall deliver to the Economic Development Director of the County, pursuant to the instructions set forth in **Section 10.1** of this Fee Agreement, with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or a Phase thereof was placed in service; and (iii) include copies of all filings made in accordance with this **Section**.

**ARTICLE IV  
FILOT PAYMENTS**

**Section 4.1. FILOT Payments.**

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the FILOT Act (for the Land portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by
- (ii) An assessment ratio of six percent (6%), multiplied by
- (iii) A fixed millage rate equal to 469.0 mills, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of **[June 30, 2018]**.

As authorized in, and subject to the provisions of, Section 12-44-50(A)(3) of the FILOT Act, the FILOT Payments shall be calculated pursuant to an alternative payment method yielding (over the Phase Exemption Period for each Phase) a payment stream which has the same net present value as the payment stream which would be generated using the standard FILOT calculation provided under Section 12-44-50(A)(1) of the FILOT Act and the factors set forth above in **Section 4.1** of this Fee Agreement. Such net present value calculations shall be determined using a discount rate which is equivalent to the yield in effect for new or existing United States Treasury bonds of similar maturity as published during the month in which this Fee Agreement is executed, which is [ ]% (*i.e.*, the discount rate so in effect on [ ]).

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the FILOT Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with **Section 4.7** of this Fee Agreement.

**Section 4.2. FILOT Payments on Replacement Property.** If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the FILOT Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with **Section 4.1** of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace and such replacement occurs after the Investment Period.

**Section 4.3. Removal of Components of the Project.** Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is prospectively subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes; provided, however, that notwithstanding the foregoing provisions of this **Section 4.3**, if any part of the Economic Development Property is so removed and disposed of, then the Sponsor is obligated to pay to the County an amount equal to the difference between (i) what the Sponsor would have paid to the County with respect to such Economic Development Property using the standard FILOT calculation described in Section 12-44-50(A)(1) of the FILOT Act and the factors set forth in **Section 4.1** of this Fee Agreement and (ii) the amount actually paid by the Sponsor using the alternative payment method FILOT described in Section 12-44-50(A)(3) and the factors set forth in **Section 4.1** of this Fee Agreement (a “Differential Payment”), after taking into account the Special Source Credits that would have applied, or did apply, to each such FILOT Payment, as the case may be. Such Differential Payment will be made and included by the Sponsor with the FILOT Payment due to the County for the tax year corresponding to the property tax year in which such removal and disposal occurs.

**Section 4.4. Damage or Destruction of Economic Development Property.**

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the tax year corresponding to the property tax year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

**Section 4.5. Condemnation.**

(a) *Complete Taking.* If at any time during the Term of this Fee Agreement title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic

Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

**Section 4.6. Calculating FILOT Payments on Diminution in Value.** If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in **Section 4.1(a)(i)** of this Fee Agreement.

**Section 4.7. Payment of Ad Valorem Taxes.** If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the FILOT Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property for a particular tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

**Section 4.8. Place of FILOT Payments.** All FILOT Payments shall be made directly to the County in accordance with applicable law.

**Section 4.9. Failure to Satisfy the NPV FILOT Minimum Investment Requirement.** In the event that the NPV FILOT Minimum Investment Requirement is not satisfied, but the Standard FILOT Minimum Investment Requirement is nevertheless satisfied, then the FILOT Payments shall revert retroactively and prospectively to the amounts due under the standard FILOT under Section 12-44-50(A)(1) of the FILOT Act and the factors set forth in **Section 4.1** of this Fee Agreement, and in such event, the Sponsor shall pay to the County a Differential Payment as described in **Section 4.3** of this Fee Agreement.

## ARTICLE V ADDITIONAL INCENTIVES

**Section 5.1. Special Source Credits.** To assist in the payment of, or reimbursement for, costs of Infrastructure, the Sponsor is entitled to claim a Special Source Credit to reduce each FILOT Payment due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Special Source Credit is described in Exhibit D. In no event may the Sponsor's aggregate Special Source Credit claimed pursuant to this **Section** exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Special Source Credit is applicable ("*Credit Term*"), the County shall, following receipt by the County from the Sponsor of notice setting forth the annual depreciation rate utilized pursuant to Section 12-44-50(A)(1)(c)(ii) of the FILOT Act for such property tax year, which notice shall be in form and substance reasonably acceptable to the County, prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in

accordance with Exhibit D. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

## ARTICLE VI CLAW BACK

**Section 6.1. *Claw Back.*** If the Sponsor fails to satisfy the Contract Minimum Investment Requirement by the end of the Investment Period, then the Sponsor is subject to the claw backs as described in Exhibit E with respect to the Special Source Credits. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this **Section** and Exhibit E survives termination of this Fee Agreement.

## ARTICLE VII DEFAULT

**Section 7.1. *Events of Default.*** The following are “Events of Default” under this Fee Agreement:

(a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in such payment and requesting that it be remedied;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a “*Cessation of Operations*” means a publicly announced closure of the Facility made by the Sponsor or a complete cessation of operations at the Project that continues for a period of twelve (12) consecutive months;

(d) A representation or warranty made by the Sponsor which is deemed materially incorrect when deemed made;

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

(f) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

**Section 7.2. Remedies on Default.**

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

**Section 7.3. Reimbursement of Legal Fees and Other Expenses.** On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 7.4. Remedies Not Exclusive.** No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

**ARTICLE VIII  
PARTICULAR RIGHTS AND COVENANTS**

**Section 8.1. Right to Inspect.** The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email) to the Sponsor designee identified in **Section 10.1** of this Fee Agreement, may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

**Section 8.2. Confidentiality.** The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“*Confidential Information*”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “*Confidential Information.*” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement

prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

**Section 8.3. Indemnification Covenants.**

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “*Indemnified Party*”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement (each, a “*Claim*”).

(b) In the event the County resists or defends against any Claim on behalf of itself or any other Indemnified Party, the County is entitled to designate counsel of its choice, subject to approval by the Sponsor, which approval shall not be unreasonably withheld, conditioned or delayed, and the Sponsor shall reimburse the County for all of its reasonable costs, including reasonable attorneys’ fees, incurred in connection with the response to or defense against such Claim. The County shall provide, on a monthly basis, a statement of all such costs incurred in the response or defense during such month, and the Sponsor shall pay the County within 30 days of receipt of the statement, together with reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide the portions of any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any Claim on behalf of itself or any other Indemnified Party. On such request, the Sponsor shall resist or defend against such Claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such Claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such Claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any Claim (i) occasioned by the acts of any Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from any Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any Claim, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a Claim.

**Section 8.4. No Liability of County Personnel.** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.



**Section 8.5. Limitation of Liability.** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. Transfer and Assignment.** The County agrees that the Sponsor and each other Sponsor Affiliate may at any time (a) transfer all or any of its rights and interests hereunder or with respect to all or any part of the Project to any Person; or (b) enter into any lending, financing, leasing, security, or similar arrangement or succession of such arrangements with any financing entity or other Person with respect to this Agreement or all or any part of the Project, including without limitation any sale-leaseback, equipment lease, build-to-suit lease, synthetic lease, nordic lease, defeased tax benefit or transfer lease, assignment, sublease or similar arrangement or succession of such arrangements, regardless of the identity of the income tax owner of such portion of the Project, whereby the transferee in any such arrangement leases the portion of the Project in question to the Sponsor or any Sponsor Affiliate or operates such assets for the Sponsor or any Sponsor Affiliate or is leasing all or a portion of the Project in question from the Sponsor or any Sponsor Affiliate. In the event of any such transfer, lease, financing, or other transaction described above, the rights and interests of the Sponsor or such other Sponsor Affiliate under this Agreement, including, without limitation, the benefits of the FILOT Payments and the Special Source Credits, with respect to any Project property so transferred, leased, financed, or otherwise affected shall be so transferred and preserved, automatically, without action of the County, subject to the following provisions: (i) except in connection with any transfer to any other Sponsor or Sponsor Affiliate or an Affiliate of the Sponsor or any Sponsor Affiliate, or transfers, leases, or financing arrangements pursuant to clause (b) above, as to all of which transfers and other transactions the County hereby preapproves and consents, the Sponsor or such Sponsor Affiliate shall obtain the prior written consent or subsequent written ratification of the County, which consent or subsequent ratification of the County shall not be unreasonably conditioned, withheld, or delayed; (ii) except when a financing entity which is the income tax owner of all or part of the Project property is the transferee pursuant to clause (b) above and such financing entity assumes in writing the obligations of the Sponsor or such other Sponsor Affiliate hereunder, or when the County consents in writing or when the transfer relates to Removed Components, no such transfer shall affect or reduce any of the obligations of the Sponsor or any such other Sponsor Affiliate hereunder; (iii) to the extent the transferee or financing entity shall become obligated to make FILOT Payments hereunder, the transferee shall assume the then current basis of the Sponsor or any such Sponsor Affiliate in the Project property so transferred; (iv) the Sponsor or any such Sponsor Affiliate, transferee or financing entity shall, within sixty (60) days thereof, furnish or cause to be furnished to the County and the Department of Revenue notice of any such transfer agreement. The County acknowledges that, notwithstanding any of the terms of this **Section 8.6** or this Agreement, it has no right of consent or subsequent ratification to a change in the direct or indirect ownership of the Sponsor or any Sponsor Affiliate.

**Section 8.7. No Double Payment; Future Changes in Legislation.** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.8. Administration Expenses.** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$5,000. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a

charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

## **ARTICLE IX SPONSOR AFFILIATES**

**Section 9.1. *Sponsor Affiliates.*** The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the FILOT Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

**Section 9.2. *Primary Responsibility.*** Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

## **ARTICLE X MISCELLANEOUS**

**Section 10.1. *Notices.*** Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE SPONSOR:**

Eastover Solar LLC  
c/o Community Energy Solar, LLC  
Attn: Chris Killenberg  
151 E. Rosemary St., Suite 202  
Chapel Hill, North Carolina 27514

**WITH A COPY TO (does not constitute notice):**

Nexsen Pruet, LLC  
Attn: Tushar V. Chikhliker  
1230 Main Street, Suite 700 (29201)  
Post Office Drawer 2426  
Columbia, South Carolina 29202

**IF TO THE COUNTY:**

Richland County, South Carolina  
Attn: Richland County Economic Development Director  
2020 Hampton Street  
Columbia, South Carolina 29204

**WITH A COPY TO (does not constitute notice):**

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

**Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor.** Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

**Section 10.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 10.4. Governing Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

**Section 10.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

**Section 10.6. Amendments.** This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

**Section 10.7. Agreement to Sign Other Documents.** From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the FILOT Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

**Section 10.8. Interpretation; Invalidity; Change in Laws.**

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the FILOT Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the FILOT Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate or expand in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or infrastructure credit to the Sponsor to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

**Section 10.9. Force Majeure.** The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Term; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement. This Fee Agreement shall be and remain in full force and effect for a term commencing on the effective date of this Fee Agreement, and ending at midnight on the later of (i) the day the last FILOT Payment is made under this Fee Agreement; or (ii) the day all Special Source Credits due from the County hereunder have been fully provided by the County.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are expressly stated in the Fee Agreement to survive termination, shall survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. Entire Agreement.** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. Waiver.** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. Business Day.** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. Agreement's Construction.** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

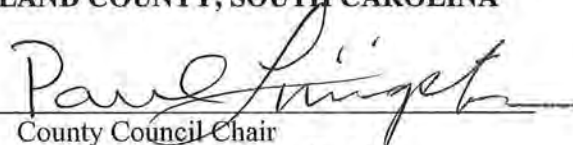
[Signature pages follow]

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

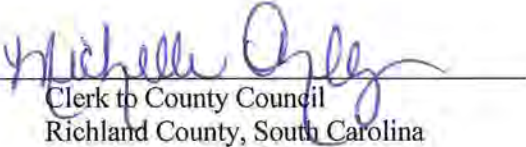
By:



County Council Chair  
Richland County, South Carolina

**ATTEST:**

By:



Clerk to County Council  
Richland County, South Carolina

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**EASTOVER SOLAR LLC**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**EXHIBIT A  
PROPERTY DESCRIPTION**

**[FULL PROPERTY DESCRIPTION TO BE INSERTED]**

**TAX MAP NOS.**

**R39200-02-03  
R39300-02-02 (portion)  
R39300-02-06 (portion)  
R39300-02-05 (portion)**

**EXHIBIT B (see Section 9.1)**  
**FORM OF JOINDER AGREEMENT**

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective \_\_\_\_\_, 2019 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Eastover Solar LLC, a limited liability company organized and existing under the laws of the State of Delaware (“Sponsor”).

**1. Joinder to Fee Agreement.**

[\_\_\_\_\_], a \_\_\_\_\_ authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: \_\_\_\_\_]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following \_\_\_\_\_]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the FILOT Act.

**2. Capitalized Terms.**

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

**3. Representations of the Sponsor Affiliate.**

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

**4. Governing Law.**

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

**5. Notice.**

Notices under **Section 10.1** of the Fee Agreement shall be sent to:

[\_\_\_\_\_]



IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

\_\_\_\_\_   
Date

**EASTOVER SOLAR LLC**

By: \_\_\_\_\_   
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

**RICHLAND COUNTY, SOUTH CAROLINA**

\_\_\_\_\_   
By: \_\_\_\_\_   
Its: \_\_\_\_\_

**EXHIBIT C (see Section 3.3)**  
**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING**  
**ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**[TO BE ADDED]**

**EXHIBIT D (see Section 5.1)**  
**DESCRIPTION OF SPECIAL SOURCE CREDIT**

The Sponsor shall be entitled to receive, and the County shall provide, Special Source Credits against each FILOT Payment due from the Sponsor under this Fee Agreement for the full Term of this Fee Agreement in an amount equal to seventy seven percent (77%) of each such FILOT Payment, commencing with the tax year for which the initial FILOT Payment is due under this Fee Agreement.

Notwithstanding the foregoing provisions of this Exhibit D, (i) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the FILOT Act, in calculating any FILOT Payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is less than 5%, the above-described initial Special Source Credits percentage (77%) otherwise applicable against the FILOT Payment due with respect to such property shall be increased by an amount sufficient so that such net FILOT Payment due after application of such increased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (77%); and (ii) in the event that the annual depreciation rate utilized, pursuant to Section 12-44-50(A)(1)(c)(ii) of the FILOT Act, in calculating any FILOT Payment due with respect to all or any portion of the Project, to the extent not already fully depreciated for such purposes, is more than 5%, the above-described initial Special Source Credits percentage (77%) otherwise applicable against the FILOT Payment due with respect to such property shall be decreased by an amount sufficient so that such net FILOT Payment due after application of such decreased Special Source Credits percentage shall equal the amount of such net payment if calculated using a 5% annual depreciation rate and the above-described initial Special Source Credits percentage (77%).

THE SPECIAL SOURCE CREDITS AUTHORIZED HEREIN SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY, BUT SHALL BE A LIMITED OBLIGATION OF THE COUNTY PAYABLE SOLELY FROM THE FILOT PAYMENTS RECEIVED BY THE COUNTY HEREUNDER WITH RESPECT TO THE PROJECT.

**EXHIBIT E (see Section 6.1)**  
**DESCRIPTION OF SPECIAL SOURCE CREDITS CLAW BACK**

**Repayment Amount = Total Special Source Credits Received x Claw Back Percentage**

**Claw Back Percentage = 100% - Investment Achievement Percentage**

**Investment Achievement Percentage = Actual Investment Achieved (based on highest level of Project investment within Investment Period) / Contract Minimum Investment Requirement [may not exceed 100%]**

*For example, and by way of example only, if the County granted \$[I] in Special Source Credits, and \$[D] is the highest level invested at the Project by the end of the Investment Period, the Repayment Amount would be calculated as follows:*

*Investment Achievement Percentage = \$[D]/\$[Contract Minimum Investment Requirement] = [F]%*

*Claw Back Percentage = 100% - F% = H%*

*Repayment Amount = \$[I] x [H]% = \$[J]*

The Sponsor shall pay any amounts described in or calculated pursuant to this Exhibit E within 30 days of receipt of a written statement from the County. If not timely paid by the Sponsor, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Exhibit E survives termination of this Fee Agreement.

The Sponsor shall continue to be eligible for the Special Source Credits against each FILOT Payment due from the Sponsor for the remaining tax years of the period set forth in **Section 5.1** and **Exhibit D** of this Fee Agreement; provided, however, in the event that determination of the Investment Achievement Percentage results in a positive percentage figure, the initial Special Source Credits percentage set forth in **Section 5.1** and Exhibit D of this Fee Agreement (77%) shall be reduced for the remaining such period by the percentage equal to such Investment Achievement Percentage (*i.e.*, if an Investment Achievement Percentage of 10%, a resulting prospective Special Source Credits percentage of 69.3%); provided, further, however, that in the event that the Actual Investment Achieved (as described above) is less than \$25,000,000, any such Special Source Credits shall terminate prospectively with respect to such remaining tax years.

EXHIBIT B

Updated Exhibit D

**Eastover Solar LLC**  
Richland County

40-Year Fee-in-Lieu of Tax Illustration (Fixed Millage), Equalized Payments, \$113 Million, SSRC, **Original FILOT Terms w/ Front Loaded SSRC**

	A	B	C	D	E
Year	Equalized FILOT Payments 40-Yr. Term	Less Pro-Rated 49.593% SSRC	Net Company Payment	Less "Front Loaded" SSRC	Net Company Payment
1	\$ 575,774	\$ 285,546	\$ 290,228	\$ 72,331	\$ 217,897
2	\$ 575,774	\$ 285,546	\$ 290,228	\$ 72,331	\$ 217,897
3	\$ 575,774	\$ 285,546	\$ 290,228	\$ 72,331	\$ 217,897
4	\$ 575,774	\$ 285,546	\$ 290,228	\$ 72,331	\$ 217,897
5	\$ 575,774	\$ 285,546	\$ 290,228	\$ 72,331	\$ 217,897
6	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
7	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
8	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
9	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
10	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
11	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
12	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
13	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
14	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
15	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
16	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
17	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
18	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
19	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
20	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
21	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
22	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
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35	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
36	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
37	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
38	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
39	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
40	\$ 575,774	\$ 285,546	\$ 290,228		\$ 310,092
Totals	\$ 23,030,953	\$ 11,421,844	\$ 11,609,109	\$ 361,655	\$ 11,942,703
NPV	\$ 12,014,635	\$ 5,958,472	\$ 6,056,163	\$ 325,196	\$ 6,056,164

**Investment Schedule:**

Land & Building	\$ -
Machinery & Equipment	\$ 113,455,785
Total Investment	\$ 113,455,785

**Assumptions:**

Tax District	1LR (2018)
Net Total Millage	0.469
Annual Depreciation	18%
Max Depreciation	90%
Discount Rate	3.65%

FILOT Assessment Ratios

Real Property	6.0%
Personal Property	6.0%

DATE: 10/27/2022

**DISCLAIMER:** The calculations provided herein are for illustration purposes only and are merely estimates. No portion of these calculations should be construed as a commitment to provide incentives or as a guaranty of savings. The actual amounts due from any company will depend on the amount invested, the timing of such investment and the final incentive package, if any, approved by the required governmental entities.

## Richland County Council Request for Action

**Subject:**

An Ordinance establishing the offense of using, discharging, shooting, or igniting fireworks or similar explosives within Richland County between certain hours, to provide exceptions, and to provide a penalty for each violation

**Notes:**

December 15, 2022 – The D&S Committee recommended Council to approve the proposed ordinance to include recommendations from the County Attorney’s Office and suggestions made during the committee meeting.

First Reading: February 7, 2023

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_-22HR

AN ORDINANCE ESTABLISHING THE OFFENSE OF USING, DISCHARGING, SHOOTING, OR IGNITING FIREWORKS OR SIMILAR EXPLOSIVES WITHIN RICHLAND COUNTY BETWEEN CERTAIN HOURS, TO PROVIDE EXCEPTIONS, AND TO PROVIDE A PENALTY FOR EACH VIOLATION.

Pursuant to the authority granted by the Constitution of the State of South Carolina and the General Assembly of the State of South Carolina, BE IT ENACTED BY RICHLAND COUNTY COUNCIL:

SECTION I. The Richland County Code of Ordinances, Chapter 18, Offenses, is hereby amended by adding:

**Sec. 18-7. Fireworks and Similar Explosives**

- a) Except as otherwise provided in this section, it is unlawful for a person to use, discharge, shoot, or ignite fireworks or similar explosives within Richland County between the hours of 10:00 PM and 7:00 AM. This section may not be construed to prohibit the discharge or lighting of sparklers or similar pyrotechnic products which generate no appreciable noise at any time.
- b) Notwithstanding the provisions of subsection (a), the permitted hours for the use of fireworks must be extended on the Fourth of July and New Year's Eve. Therefore, it is only unlawful for a person to use, discharge, shoot, or ignite fireworks or similar explosives within Richland County between the hours of ~~12:30~~1:00 AM and ~~9:00~~7:00 AM on July 5th and January 1st.
- c) It is unlawful to:
  - (1) Negligently, recklessly, or intentionally direct the discharge of fireworks towards a structure, animal, or person;
  - (2) Intentionally detonate fireworks upon the land of another without express prior consent;
  - (3) Offer for sale or sell permissible fireworks to children under the age of ~~fourteen (14)~~sixteen (16) years unless accompanied by a parent;
  - (4) To ignite or detonate fireworks within six hundred (600) feet of a church, hospital, public school, unless authorized by the proper officials or managers of the property, during the times allowable under section b;
  - (5) To ignite or detonate permissible fireworks within a motor vehicle or discharge a permissible fireworks from a motor vehicle; and
  - (6) To place or throw an ignited firework into or at a motor vehicle.
- d) A County fire or law enforcement official may seize, take, remove, or cause to be removed all stocks of fireworks or explosives held in violation of the provisions of this section.
- ~~e) A violation of this section is punishable by a civil penalty of up to one hundred dollars (\$100). Each violation of this section may be punished as a separate offense.~~
- e) A violation of this section is punishable by a civil penalty of up to:



- (1) \$500, for a 1<sup>st</sup> offense;
- (2) \$750, for a 2<sup>nd</sup> offense; and,
- (3) \$1,000 for a 3<sup>rd</sup> or subsequent offense.

~~(f) 2<sup>nd</sup> and 3<sup>rd</sup> offense violations are for violations occurring within a period of seven (7) days of a previously charged violation.~~

~~f) After three separate violations in a single location over a period of six months, the location can be declared to be a public nuisance and further unlawful activities may be abated by the county sheriff or a lawful officer serving under him. Once a property is declared a public nuisance, a property owner will be responsible for the cost of abatement and any subsequent violation of this section will carry a fine of \$1,000.~~

~~g)f) The County Fire Marshal or his or her designee fire official may issue a permit authorizing the use of fireworks or a public display of fireworks or similar explosives. The fire official may, in his or her discretion, grant or refuse to grant the permit or grant the permit subject to restrictions and limitations provided by this ordinance or deemed necessary in the interest of public safety in connection with such public display or exhibition by the fire official.~~

~~g) Nothing in this article may be construed to prohibit the use of flares or similar devices necessary for the safe operation of railroads, buses, trucks, or other vehicles within the County.~~

~~h) Disputed violations will be heard in the local magistrate court upon petition of the alleged offender.~~

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SECTION II. Effective Date. This ordinance shall be enforced from and after \_\_\_\_\_.

RICHLAND COUNTY COUNCIL

By: \_\_\_\_\_  
Overture Walker, Chair

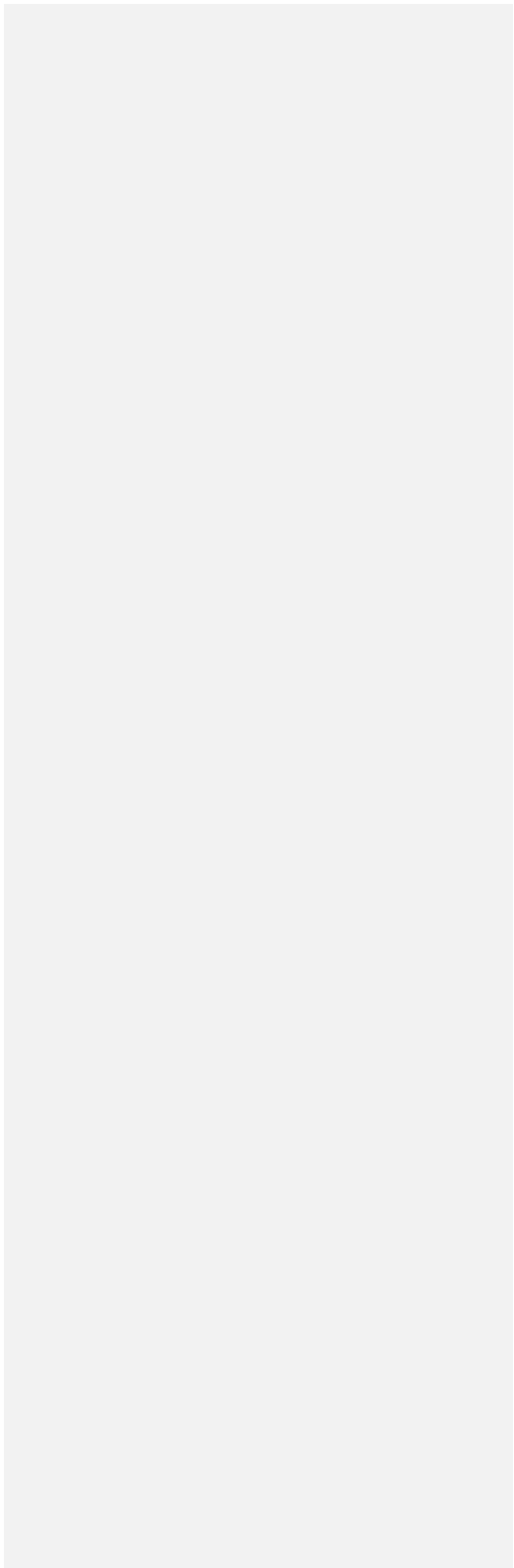
Attest this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

\_\_\_\_\_  
Anette Kirylo  
Clerk of Council

RICHLAND COUNTY ATTORNEY'S OFFICE

\_\_\_\_\_  
Approved As To LEGAL Form Only.  
No Opinion Rendered As To Content.

First Reading:  
Second Reading:  
Public Hearing:  
Third Reading:



## Richland County Council Request for Action

**Subject:**

Authorizing the execution and delivery of a fee-in-lieu of ad valorem taxes and incentive agreement by and between Richland County, South Carolina and Project Connect to provide for payment of a fee-in-lieu of taxes; authorizing certain infrastructure credits; authorizing the execution and delivery of a project development agreement or memorandum of understanding by Richland County, South Carolina; and other related matters

**Notes:**

First Reading: February 7, 2023

Second Reading:

Third Reading:

Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**AUTHORIZING THE EXECUTION AND DELIVERY OF A FEE-IN-LIEU OF AD VALOREM TAXES AND INCENTIVE AGREEMENT BY AND BETWEEN RICHLAND COUNTY, SOUTH CAROLINA AND PROJECT CONNECT TO PROVIDE FOR PAYMENT OF A FEE-IN-LIEU OF TAXES; AUTHORIZING CERTAIN INFRASTRUCTURE CREDITS; AUTHORIZING THE EXECUTION AND DELIVERY OF A PROJECT DEVELOPMENT AGREEMENT OR MEMORANDUM OF UNDERSTANDING BY RICHLAND COUNTY, SOUTH CAROLINA; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County, South Carolina (“County”), acting by and through its County Council (“County Council”) is authorized pursuant to the provisions of Title 12, Chapter 44, Code of Laws of South Carolina, 1976, as amended (“FILOT Act”), to encourage manufacturing and commercial enterprises to locate in the State of South Carolina (“South Carolina” or “State”) or to encourage manufacturing and commercial enterprises now located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the FILOT Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“FILOT Payments”), with respect to economic development property, as defined in the FILOT Act;

WHEREAS, pursuant to Article VIII, Section 13 of the South Carolina Constitution and Title 4, Section 1, Code of Laws of South Carolina, 1976, as amended (collectively, “MCIP Act”), the County is authorized to jointly develop multicounty parks with counties having contiguous borders with the County and, in the County’s discretion, include property within the boundaries of such multicounty parks. Under the authority provided in the MCIP Act, the County has created a multicounty park with Fairfield County more particularly known as the I-77 Corridor Regional Industrial Park (“Park”);

WHEREAS, pursuant to the FILOT and MCIP Acts, the County is authorized to provide credits (“Infrastructure Credits”) against FILOT Payments derived from economic development property to pay costs of designing, acquiring, constructing, improving or expanding (i) infrastructure serving a project or the County and (ii) improved and unimproved real estate and personal property used in the operation of a commercial enterprise or manufacturing facility (“Infrastructure”);

WHEREAS, Project Connect, (“Sponsor”), desires to establish a manufacturing facility in the County (“Project”) consisting of taxable investment in real and personal property of not less than \$[2,000,000,000] and the creation of [4,000] new, full-time jobs; and

WHEREAS, at the request of the Sponsor and as an inducement to locate the Project in the County, the County desires to enter into (a) a Fee-in-Lieu of *Ad Valorem* Taxes and Incentive Agreement with the Sponsor, the substantially final form of which is attached as Exhibit A (“Fee Agreement”), pursuant to which the County will provide certain incentives to the Sponsor with respect to the Project, including (i) providing for FILOT Payments, to be calculated as set forth in the Fee Agreement, with respect to the portion of the Project which constitutes economic development property; and (ii) locating the Project in the Park; and (iii) providing Infrastructure Credits and other incentives, as described in the Fee Agreement, to assist in paying the costs of certain Infrastructure, (b) a Project Development Agreement with the Sponsor, the Department of Commerce, the South Carolina Coordinating Council for Economic Development and the City of Columbia, South Carolina with respect to the Project, and (c) a lease or purchase agreement with the Sponsor with respect to the real property on which the Project will be located.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1. Statutory Findings.** Based on information supplied to the County by the Sponsor, County Council evaluated the Project based on relevant criteria including, the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment, employment to be created, and the anticipated costs and benefits to the County, and hereby finds:

(a) The Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally;

(b) The Project gives rise to no pecuniary liability of the County or incorporated municipality or a charge against its general credit or taxing power; and

(c) The purposes to be accomplished by the Project are proper governmental and public purposes and the benefits of the Project are greater than the costs.

**Section 2. Approval of Incentives; Authorization to Execute and Deliver Fee Agreement.** The incentives as described in this Ordinance (“Ordinance”), and as more particularly set forth in the Fee Agreement, with respect to the Project are hereby approved. The form, terms and provisions of the Fee Agreement that is before this meeting are approved and all of the Fee Agreement’s terms and conditions are incorporated in this Ordinance by reference. The Chair of County Council (“Chair”) is authorized and directed to execute the Fee Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Fee Agreement and to deliver the Fee Agreement to the Sponsor.

**Section 3. Approval of Project Development Agreement; Authorization to Execute and Deliver Project Development Agreement.** The Chair, the County Administrator and the Director of Economic Development, acting on the advice of and in consultation with counsel to the County, are each authorized on behalf of and in the name of the County to negotiate the form, terms and provisions of the Project Development Agreement. The Chair is authorized and directed to execute the Project Development Agreement in the name of and on behalf of the County in such final form as may be approved by the Chair, the County Administrator or the Director of Economic Development (which execution by the Chair shall be conclusive evidence of the approval of the final form of the Project Development Agreement), and the Clerk to County Council is hereby authorized and directed to attest the Project Development Agreement and to deliver the Project Development Agreement to the other parties thereto.

**Section 4. Real Property Considerations** The County is authorized to sell or lease to the Sponsor up to approximately [ ] acres of real property (“Property”) located in the County and more particularly shown as on Exhibit [ ] attached hereto. The Chair, the County Administrator and the Director of Economic Development, acting on the advice of and in consultation with counsel to the County, are each authorized and directed to negotiate the form, terms and provisions of a lease or purchase agreement (collectively, “Real Property Agreement”) on behalf of and in the name of the County. The Chair is authorized and directed to execute the Real Property Agreement in the name of and on behalf of the County in such final form as may be approved by the Chair, the County Administrator or the Director or Economic Development (which execution by the Chair shall be conclusive evidence of the approval of the final form of the Real Property Agreement), and the Clerk to County Council is hereby authorized and directed to attest the Real Property Agreement and to deliver the Real Property Agreement to the Sponsor.

The Chair, the County Administrator and the Director of Economic Development are each authorized and directed, in the name of and on behalf of the County, to take such further actions as may be necessary, to accomplish the lease or transfer of the Property or interests in the Property.

**Section 5. *Inclusion within the Park.*** The expansion of the Park boundaries to include the Project is authorized and approved. The Chair, the County Administrator and the Clerk to County Council are each authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries. Pursuant to the terms of the agreement governing the Park (“Park Agreement”), the expansion of the Park’s boundaries and the amendment to the Park Agreement is complete on adoption of this Ordinance by County Council and delivery of written notice to Fairfield County of the inclusion of the Project in the Park.

**Section 6. *Further Assurances.*** The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development, the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, or the Director of Economic Development, as appropriate, to take whatever further action and for the Chair, the County Administrator, and the Director of Economic Development to negotiate, execute and deliver whatever further documents, and for the Clerk to County Council to attest the same, as may be appropriate to effect this Ordinance and the incentives offered to the Sponsor under this Ordinance and the Fee Agreement and to carry are the obligations of the County in the Project Development Agreement or the Real Property Agreement.

**Section 7. *Savings Clause.*** The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 8. *General Repealer.*** Any prior ordinance, resolution, or order, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 9. *Effectiveness.*** This Ordinance is effective after its third reading and public hearing.

RICHLAND COUNTY, SOUTH CAROLINA

---

Chair, Richland County Council

(SEAL)  
ATTEST:

---

Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

---

Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: February 7, 2023  
Second Reading: February 14, 2023  
Public Hearing:  
Third Reading:

**EXHIBIT A**  
**FORM OF FEE AGREEMENT**



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**FEE-IN-LIEU OF *AD VALOREM* TAXES AND INCENTIVE AGREEMENT**

**BETWEEN**

**PROJECT CONNECT**

**AND**

**RICHLAND COUNTY, SOUTH CAROLINA**

**EFFECTIVE AS OF [ ], 2023**

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**SUMMARY OF CONTENTS OF  
FEE AGREEMENT**

The parties have agreed to waive the requirement to recapitulate the contents of this Fee Agreement pursuant to Section 12-44-55 of the Code (as defined herein). However, the parties have agreed to include a summary of the key provisions of this Fee Agreement for the convenience of the parties. This summary is included for convenience only and is not to be construed as a part of the terms and conditions of this Fee Agreement.

<b>PROVISION</b>	<b>BRIEF DESCRIPTION</b>	<b>SECTION REFERENCE</b>
<b>Sponsor Name</b>	[Project Connect]	<b>1.1</b>
<b>Project Location</b>	[TBA]	<b>Exhibit A</b>
<b>Tax Map No.</b>		Exhibit A
<b>FILOT</b>		
<ul style="list-style-type: none"> <li>• Phase Exemption Period</li> </ul>	40 years	1.1
<ul style="list-style-type: none"> <li>• Contract Minimum Investment Requirement</li> </ul>	[2,000,000,000]	1.1
<ul style="list-style-type: none"> <li>• Contract Minimum Jobs Requirement</li> </ul>	[4,000]	1.1
<ul style="list-style-type: none"> <li>• Investment Period</li> </ul>	13 years – extendable to 15 years	1.1
<ul style="list-style-type: none"> <li>• Assessment Ratio</li> </ul>	4%	4.1(a)
<ul style="list-style-type: none"> <li>• Millage Rate</li> </ul>	.5803	4.1(a)
<ul style="list-style-type: none"> <li>• Fixed or Five-Year Adjustable Millage</li> </ul>	fixed	4.1(a)
<ul style="list-style-type: none"> <li>• Claw Back Information</li> </ul>	Pro-rata	Exhibit E
<b>Multicounty Park</b>	I-77 Corridor Regional Industrial Park	1.1
<b>Infrastructure Credit</b>		
<ul style="list-style-type: none"> <li>• Brief Description</li> </ul>	50%	Exhibit D
<ul style="list-style-type: none"> <li>• Credit Term</li> </ul>	40 years	Exhibit D
<ul style="list-style-type: none"> <li>• Claw Back Information</li> </ul>	Pro-rata	Exhibit E
<b>Other Information</b>		

## FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT

THIS FEE-IN-LIEU OF AD VALOREM TAXES AGREEMENT (“*Fee Agreement*”) is entered into, effective, as of [ ], 2023, between Richland County, South Carolina (“*County*”), a body politic and corporate and a political subdivision of the State of South Carolina (“*State*”), acting through the Richland County Council (“*County Council*”) as the governing body of the County, and a company currently known to the County as Project Connect (“*Sponsor*”).

WITNESSETH:

(a) Title 12, Chapter 44, (“*Act*”) of the Code of Laws of South Carolina, 1976, as amended (“*Code*”), authorizes the County to induce manufacturing and commercial enterprises to locate in the State or to encourage manufacturing and commercial enterprises currently located in the State to expand their investments and thus make use of and employ the manpower, products, and other resources of the State by entering into an agreement with a sponsor, as defined in the Act, that provides for the payment of a fee-in-lieu of *ad valorem* tax (“*FILOT*”) with respect to Economic Development Property, as defined below;

(b) Sections 4-1-175 and 12-44-70 of the Code authorize the County to provide credits (“*Infrastructure Credit*”) against payments in lieu of taxes for the purpose of defraying of the cost of designing, acquiring, constructing, improving, or expanding (i) the infrastructure serving the County or a project and (ii) for improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing facility or commercial enterprise (collectively, “*Infrastructure*”);

(c) The Sponsor has committed to establish a manufacturing facility (“*Facility*”) in the County, consisting of taxable investment in real and personal property of not less than [2,000,000,000] and the creation of [4,000] new full-time jobs;

(d) By an ordinance enacted on [ ], 2023, County Council authorized the County to enter into this Fee Agreement with the Sponsor to provide for a FILOT and the other incentives as more particularly described in this Fee Agreement to induce the Sponsor to locate its Facility in the County.

NOW, THEREFORE, AND IN CONSIDERATION of the respective representations and agreements hereinafter contained, the parties agree as follows:

### ARTICLE I DEFINITIONS

**Section 1.1. Terms.** The defined terms used in this Fee Agreement have the meaning given below, unless the context clearly requires otherwise.

“*Act*” means Title 12, Chapter 44 of the Code, and all future acts successor or supplemental thereto or amendatory of this Fee Agreement.

“*Act Minimum Investment Requirement*” means an investment of at least \$400,000,000 in the Project within eight years of the Commencement Date pursuant to Sections 12-44-30(7) and 12-44-30(13) of the Act.

“*Administration Expenses*” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Fee Agreement, including reasonable attorney’s and consultant’s fees. Administration Expenses does not include any costs, expenses, including attorney’s fees, incurred by the County (i) in defending challenges to the FILOT Payments, Infrastructure Credits or other incentives provided by this Fee Agreement brought by third parties or the

Sponsor or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Sponsor outside of the immediate scope of this Fee Agreement, including amendments to the terms of this Fee Agreement.

“**Code**” means the Code of Laws of South Carolina, 1976, as amended.

“**Commencement Date**” means the last day of the property tax year during which the initial Economic Development Property is placed in service. The Commencement Date shall not be later than the last day of the property tax year which is three years from the year in which the County and the Sponsor enter into this Fee Agreement. For purposes of this Fee Agreement, the Commencement Date is expected to be December 31, 2023.

“**Contract Minimum Investment Requirement**” means a taxable investment in real and personal property at the Project of not less than \$[2,000,000,000].

“**Contract Minimum Jobs Requirement**” means not less than [4,000] full-time, jobs created by the Sponsor in the County in connection with the Project.

“**County**” means Richland County, South Carolina, a body politic and corporate and a political subdivision of the State, its successors and assigns, acting by and through the County Council as the governing body of the County.

“**County Council**” means the Richland County Council, the governing body of the County.

“**Credit Term**” means the years during the Fee Term in which the Infrastructure Credit is applicable, as described in Exhibit C.

“**Department**” means the South Carolina Department of Revenue.

“**Diminution in Value**” means a reduction in the fair market value of Economic Development Property, as determined in Section 4.1(a)(i) of this Fee Agreement, which may be caused by (i) the removal or disposal of components of the Project pursuant to Section 4.3 of this Fee Agreement; (ii) a casualty as described in Section 4.4 of this Fee Agreement; or (iii) a condemnation as described in Section 4.5 of this Fee Agreement.

“**Economic Development Property**” means those items of real and tangible personal property of the Project placed in service not later than the end of the Investment Period that (i) satisfy the conditions of classification as economic development property under the Act, and (ii) are identified by the Sponsor in its annual filing of a PT-300S or comparable form with the Department (as such filing may be amended from time to time).

“**Equipment**” means all of the machinery, equipment, furniture, office equipment, and fixtures, together with any and all additions, accessions, replacements, and substitutions.

“**Event of Default**” means any event of default specified in Section 7.1 of this Fee Agreement.

“**Fee Agreement**” means this Fee-In-Lieu Of *Ad Valorem* Taxes and Incentive Agreement, as may be supplemented or amended.

“**Fee Term**” means the period from the effective date of this Fee Agreement until the Final Termination Date.

“**FILOT Payments**” means the amount paid or to be paid in lieu of *ad valorem* property taxes as provided in Section 4.1 of this Fee Agreement.

“**Final Phase**” means the Economic Development Property placed in service during the last year of the Investment Period.

“**Final Termination Date**” means the date on which the last FILOT Payment with respect to the Final Phase is made, or such earlier date as the Fee Agreement is terminated in accordance with the terms of this Fee Agreement. Assuming the Phase Termination Date for the Final Phase is December 31, 2075, the Final Termination Date is expected to be January 15, 2077, which is the due date of the last FILOT Payment with respect to the Final Phase.

“**Improvements**” means all improvements to the Real Property, including buildings, building additions, roads, sewer lines, and infrastructure, together with all additions, fixtures, accessions, replacements, and substitutions.

“**Infrastructure**” means (i) the infrastructure serving the County or the Project, (ii) improved and unimproved real estate, and personal property, including machinery and equipment, used in the operation of a manufacturing or commercial enterprise, or (iii) such other items as may be described in or permitted under Section 4-29-68 of the Code.

“**Infrastructure Credit**” means the credit provided to the Sponsor pursuant to Section 12-44-70 of the Act and Section 5.1 of this Fee Agreement, with respect to the Infrastructure. Infrastructure Credits are to be used for the payment of Infrastructure constituting real property, improvements and infrastructure before any use for the payment of Infrastructure constituting personal property, notwithstanding any presumptions to the contrary in the MCIP Act or otherwise.

“**Investment Period**” means the period beginning with the first day of any purchase or acquisition of Economic Development Property and ending thirteen years after the Commencement Date; provided that should the Sponsor invest \$500,000,000 and create 1,000 new full-time jobs within the eight year initial investment period for an enhanced development as set forth in Section 12-44-30(13) of the Act, the Investment Period shall be extended to fifteen years pursuant to Section 12-44-30(13) of the Act. For purposes of this Fee Agreement, the Investment Period, unless so extended, is expected to end on December 31, 2036.

“**MCIP Act**” means Article VIII, Section 13(D) of the Constitution of the State of South Carolina, and Sections 4-1-170, 4-1-172, 4-1-175, and 4-29-68 of the Code.

“**Multicounty Park**” means the multicounty industrial or business park governed by the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated as of September 1, 2018, between the County and Fairfield County, South Carolina, as may be amended.

“**Net FILOT Payment**” means the FILOT Payment net of the Infrastructure Credit.

“**Phase**” means the Economic Development Property placed in service during a particular year of the Investment Period.

“**Phase Exemption Period**” means, with respect to each Phase, the period beginning with the property tax year the Phase is placed in service during the Investment Period and ending on the Phase Termination Date.

**“Phase Termination Date”** means, with respect to each Phase, the last day of the property tax year which is the 39<sup>th</sup> year following the first property tax year in which the Phase is placed in service.

**“Project”** means all the Equipment, Improvements, and Real Property in the County that the Sponsor determines to be necessary, suitable, or useful by the Sponsor in connection with its investment in the County.

**“Real Property”** means real property that the Sponsor uses or will use in the County for the purposes that Section 2.2(b) describes, and initially consists of the land identified on Exhibit A of this Fee Agreement.

**“Removed Components”** means Economic Development Property which the Sponsor, in its sole discretion, (a) determines to be inadequate, obsolete, worn-out, uneconomic, damaged, unsuitable, undesirable, or unnecessary pursuant to Section 4.3 of this Fee Agreement or otherwise; or (b) elects to be treated as removed pursuant to Section 4.4(c) or Section 4.5(b)(iii) of this Fee Agreement.

**“Replacement Property”** means any property which is placed in service as a replacement for any Removed Component regardless of whether the Replacement Property serves the same functions as the Removed Component it is replacing and regardless of whether more than one piece of Replacement Property replaces a single Removed Component.

**“Sponsor”** means Project Connect and any surviving, resulting, or transferee entity in any merger, consolidation, or transfer of assets; or any other person or entity which may succeed to the rights and duties of the Sponsor under this Fee Agreement.

**“Sponsor Affiliate”** means an entity that participates in the investment or job creation at the Project and, following receipt of the County’s approval pursuant to Section 9.1 of this Fee Agreement, joins this Fee Agreement by delivering a Joinder Agreement, the form of which is attached as Exhibit B to this Fee Agreement.

**“State”** means the State of South Carolina.

Any reference to any agreement or document in this Article I or otherwise in this Fee Agreement shall include any and all amendments, supplements, addenda, and modifications to such agreement or document.

The term “investment” or “invest” as used in this Fee Agreement includes not only investments made by the Sponsor, but also to the fullest extent permitted by law, those investments made by or for the benefit of the Sponsor in connection with the Project through federal, state, or local grants, to the extent such investments are or, but for the terms of this Fee Agreement, would be subject to *ad valorem* taxes to be paid by the Sponsor.

## **ARTICLE II REPRESENTATIONS AND WARRANTIES**

**Section 2.1. Representations and Warranties of the County.** The County represents and warrants as follows:

(a) The County is a body politic and corporate and a political subdivision of the State and acts through the County Council as its governing body. The Act authorizes and empowers the County to enter into the transactions that this Fee Agreement contemplates and to carry out its obligations under this Fee Agreement. The County has duly authorized the execution and delivery of this Fee Agreement and all other documents, certificates or other agreements contemplated in this Fee Agreement and has obtained all



consents from third parties and taken all actions necessary or that the law requires to fulfill its obligations under this Fee Agreement.

(b) Based on representations by the Sponsor, County Council evaluated the Project based on all relevant criteria including the purposes the Project is to accomplish, the anticipated dollar amount and nature of the investment resulting from the Project, and the anticipated costs and benefits to the County and following the evaluation, the County determined that (i) the Project is anticipated to benefit the general public welfare of the County by providing services, employment, recreation, or other public benefits not otherwise adequately provided locally; (ii) the Project gives rise to no pecuniary liability of the County or any incorporated municipality and to no charge against the County's general credit or taxing power; (iii) the purposes to be accomplished by the Project are proper governmental and public purposes; and (iv) the benefits of the Project are greater than the costs.

(c) The County identified the Project, as a "project" on [ ], 2023 by adopting an Inducement Resolution, as defined in the Act on [ ], 2023.

(d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Fee Agreement.

(e) The County has located or will take all reasonable action to locate the Project in the Multicounty Park.

**Section 2.2. Representations and Warranties of the Sponsor.** The Sponsor represents and warrants as follows:

(a) The Sponsor is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Fee Agreement, and has duly authorized the execution and delivery of this Fee Agreement.

(b) The Sponsor intends to operate the Project as a manufacturing facility for [ ] and for such other purposes that the Act permits as the Sponsor may deem appropriate.

(c) The Sponsor's execution and delivery of this Fee Agreement and its compliance with the provisions of this Fee Agreement do not result in a default under any agreement or instrument to which the Sponsor is now a party or by which it is bound.

(d) The Sponsor will use commercially reasonable efforts to achieve the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement.

(e) The execution and delivery of this Fee Agreement by the County and the availability of the FILOT and other incentives provided by this Fee Agreement has been instrumental in inducing the Sponsor to locate the Project in the County.

(f) The Sponsor has retained legal counsel to confirm, or has had a reasonable opportunity to consult legal counsel to confirm, its eligibility for the FILOT and other incentives granted by this Fee Agreement and has not relied on the County, its officials, employees or legal representatives with respect to any question of eligibility or applicability of the FILOT and other incentives granted by this Fee Agreement.

### **ARTICLE III THE PROJECT**

**Section 3.1. *The Project.*** The Sponsor intends and expects to (i) construct or acquire the Project and (ii) meet the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement within the Investment Period. The Sponsor anticipates that the first Phase of the Project will be placed in service during the calendar year ending December 31, 2023. Notwithstanding anything contained in this Fee Agreement to the contrary, the Sponsor is not obligated to complete the acquisition of the Project. However, if the Contract Minimum Investment Requirement is not met, the benefits provided to the Sponsor, or Sponsor Affiliate, if any, pursuant to this Fee Agreement may be reduced, modified or terminated as provided in this Fee Agreement.

**Section 3.2 *Leased Property.*** To the extent that State law allows or is revised or construed to permit leased assets including a building, or personal property to be installed in a building, to constitute Economic Development Property, then any property leased by the Sponsor is, at the election of the Sponsor, deemed to be Economic Development Property for purposes of this Fee Agreement, subject, at all times, to the requirements of State law and this Fee Agreement with respect to property comprising Economic Development Property.

**Section 3.3. *Filings and Reports.***

(a) On or before January 31 of each year during the term of this Fee Agreement, commencing in January 31, 2024, the Sponsor shall deliver to the Economic Development Director of the County with respect to the Sponsor and all Sponsor Affiliates, if any, the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit C, as may be amended by subsequent resolution.

(b) The Sponsor shall file a copy of this Fee Agreement and a completed PT-443 with the Economic Development Director and the Department and the Auditor, Treasurer and Assessor of the County and partner county to the Multicounty Park.

(c) On request by the County Administrator or the Economic Development Director, the Sponsor shall remit to the Economic Development Director records accounting for the acquisition, financing, construction, and operation of the Project which records (i) permit ready identification of all Economic Development Property; (ii) confirm the dates that the Economic Development Property or Phase was placed in service; and (iii) include copies of all filings made in accordance with this Section.

**ARTICLE IV  
FILOT PAYMENTS**

**Section 4.1. *FILOT Payments.***

(a) The FILOT Payment due with respect to each Phase through the Phase Termination Date is calculated as follows:

- (i) The fair market value of the Phase calculated as set forth in the Act (for the Real Property and Improvements portion of the Phase, the County and the Sponsor have elected to use the fair market value established in the first year of the Phase Exemption Period), multiplied by
- (ii) An assessment ratio of four percent (4%), multiplied by
- (iii) A fixed millage rate equal to 0.5803, which is the cumulative millage rate levied by or on behalf of all the taxing entities within which the Project is located as of June 30, 2022.

The calculation of the FILOT Payment must allow all applicable property tax exemptions except those excluded pursuant to Section 12-44-50(A)(2) of the Act. The Sponsor acknowledges that (i) the calculation of the annual FILOT Payment is a function of the Department and is wholly dependent on the Sponsor timely submitting the correct annual property tax returns to the Department, (ii) the County has no responsibility for the submission of returns or the calculation of the annual FILOT Payment, and (iii) failure by the Sponsor to submit the correct annual property tax return could lead to a loss of all or a portion of the FILOT and other incentives provided by this Fee Agreement.

(b) If a final order of a court of competent jurisdiction from which no further appeal is allowable declares the FILOT Payments invalid or unenforceable, in whole or in part, for any reason, the parties shall negotiate the reformation of the calculation of the FILOT Payments to most closely afford the Sponsor with the intended benefits of this Fee Agreement. If such order has the effect of subjecting the Economic Development Property to *ad valorem* taxation, this Fee Agreement shall terminate, and the Sponsor shall owe the County regular *ad valorem* taxes from the date of termination, in accordance with Section 4.7 of this Fee Agreement.

**Section 4.2. FILOT Payments on Replacement Property.** If the Sponsor elects to place Replacement Property in service, then, pursuant and subject to the provisions of Section 12-44-60 of the Act, the Sponsor shall make the following payments to the County with respect to the Replacement Property for the remainder of the Phase Exemption Period applicable to the Removed Component of the Replacement Property:

(a) FILOT Payments, calculated in accordance with Section 4.1 of this Fee Agreement, on the Replacement Property to the extent of the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

(b) Regular *ad valorem* tax payments to the extent the income tax basis of the Replacement Property exceeds the original income tax basis of the Removed Component the Replacement Property is deemed to replace.

**Section 4.3. Removal of Components of the Project.** Subject to the other terms and provisions of this Fee Agreement, the Sponsor is entitled to remove and dispose of components of the Project in its sole discretion. Components of the Project are deemed removed when scrapped, sold or otherwise removed from the Project. If the components removed from the Project are Economic Development Property, then the Economic Development Property is a Removed Component, no longer subject to this Fee Agreement and is subject to *ad valorem* property taxes to the extent the Removed Component remains in the State and is otherwise subject to *ad valorem* property taxes.

**Section 4.4. Damage or Destruction of Economic Development Property.**

(a) *Election to Terminate.* If Economic Development Property is damaged by fire, explosion, or any other casualty, then the Sponsor may terminate this Fee Agreement. For the property tax year corresponding to the year in which the damage or casualty occurs, the Sponsor is obligated to make FILOT Payments with respect to the damaged Economic Development Property only to the extent property subject to *ad valorem* taxes would have been subject to *ad valorem* taxes under the same circumstances for the period in question.

(b) *Election to Restore and Replace.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor does not elect to terminate this Fee Agreement, then the Sponsor may restore and replace the Economic Development Property. All restorations and replacements

made pursuant to this subsection (b) are deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property.

(c) *Election to Remove.* If Economic Development Property is damaged by fire, explosion, or any other casualty, and the Sponsor elects not to terminate this Fee Agreement pursuant to subsection (a) and elects not to restore or replace pursuant to subsection (b), then the damaged portions of the Economic Development Property are deemed Removed Components.

**Section 4.5. Condemnation.**

(a) *Complete Taking.* If at any time during the Fee Term title to or temporary use of the Economic Development Property is vested in a public or quasi-public authority by virtue of the exercise of a taking by condemnation, inverse condemnation, or the right of eminent domain; by voluntary transfer under threat of such taking; or by a taking of title to a portion of the Economic Development Property which renders continued use or occupancy of the Economic Development Property commercially unfeasible in the judgment of the Sponsor, the Sponsor shall have the option to terminate this Fee Agreement by sending written notice to the County within a reasonable period of time following such vesting.

(b) *Partial Taking.* In the event of a partial taking of the Economic Development Property or a transfer in lieu, the Sponsor may elect: (i) to terminate this Fee Agreement; (ii) to restore and replace the Economic Development Property, with such restorations and replacements deemed, to the fullest extent permitted by law and this Fee Agreement, to be Replacement Property; or (iii) to treat the portions of the Economic Development Property so taken as Removed Components.

(c) In the year in which the taking occurs, the Sponsor is obligated to make FILOT Payments with respect to the Economic Development Property so taken only to the extent property subject to *ad valorem* taxes would have been subject to taxes under the same circumstances for the period in question.

**Section 4.6. Calculating FILOT Payments on Diminution in Value.** If there is a Diminution in Value, the FILOT Payments due with respect to the Economic Development Property or Phase so diminished shall be calculated by substituting the diminished value of the Economic Development Property or Phase for the original fair market value in Section 4.1(a)(i) of this Fee Agreement.

**Section 4.7. Payment of Ad Valorem Taxes.** If Economic Development Property becomes subject to *ad valorem* taxes as imposed by law pursuant to the terms of this Fee Agreement or the Act, then the calculation of the *ad valorem* taxes due with respect to the Economic Development Property in a particular property tax year shall: (i) include the property tax reductions that would have applied to the Economic Development Property if it were not Economic Development Property; and (ii) include a credit for FILOT Payments the Sponsor has made with respect to the Economic Development Property.

**Section 4.8. Place of FILOT Payments.** All FILOT Payments shall be made directly to the County in accordance with applicable law.

**ARTICLE V  
ADDITIONAL INCENTIVES**

**Section 5.1. Infrastructure Credits.** To assist in paying for costs of Infrastructure, the Sponsor is entitled to claim an Infrastructure Credit to reduce certain FILOT Payments due and owing from the Sponsor to the County under this Fee Agreement. The term, amount and calculation of the Infrastructure Credit is described in Exhibit D. In no event may the Sponsor's aggregate Infrastructure Credit claimed pursuant to this Section exceed the aggregate expenditures by the Sponsor on Infrastructure.

For each property tax year in which the Infrastructure Credit is applicable ("**Credit Term**"), the County shall prepare and issue the annual bills with respect to the Project showing the Net FILOT Payment, calculated in accordance with Exhibit D. Following receipt of the bill, the Sponsor shall timely remit the Net FILOT Payment to the County in accordance with applicable law.

**Section 5.2. Other Incentives.** The County will lease the Real Property to the Sponsor for a nominal fee for a period of [ ] years pursuant to a lease agreement between the Sponsor and the County.

**ARTICLE VI  
CLAW BACK**

**Section 6.1. Claw Back.** If the Sponsor fails to perform its obligations under this Fee Agreement as described in Exhibit E, then the Sponsor is subject to the claw backs as described in Exhibit E. Any amount that may be due from the Sponsor to the County as calculated in accordance with or described in Exhibit E is due within 30 days of receipt of a written statement from the County. If not timely paid, the amount due from the Sponsor to the County is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation arising under this Section and Exhibit E survives termination of this Fee Agreement.

**ARTICLE VII  
DEFAULT**

**Section 7.1. Events of Default.** The following are "Events of Default" under this Fee Agreement:

(a) Failure to make FILOT Payments, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in FILOT Payments and requesting that it be remedied;

(b) Failure to timely pay any amount, except FILOT Payments, due under this Fee Agreement;

(c) A Cessation of Operations. For purposes of this Fee Agreement, a "**Cessation of Operations**" means a publicly announced closure of the Facility, a layoff of a majority of the employees working at the Facility, or a substantial reduction in production that continues for a period of twelve (12) months;

(d) A representation or warranty made by the Sponsor which is deemed materially incorrect when deemed made;

(e) Failure by the Sponsor to perform any of the terms, conditions, obligations, or covenants under this Fee Agreement (other than those under (a), above), which failure has not been cured within 30 days after written notice from the County to the Sponsor specifying such failure and requesting that it be remedied, unless the Sponsor has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Sponsor is diligently pursuing corrective action;

(f) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(g) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Sponsor to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

**Section 7.2. Remedies on Default.**

(a) If an Event of Default by the Sponsor has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Fee Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Sponsor may take any one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Fee Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

**Section 7.3. Reimbursement of Legal Fees and Other Expenses.** On the occurrence of an Event of Default, if a party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Fee Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 7.4. Remedies Not Exclusive.** No remedy described in this Fee Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Fee Agreement or existing at law or in equity or by statute.

**ARTICLE VIII  
PARTICULAR RIGHTS AND COVENANTS**

**Section 8.1. Right to Inspect.** The County and its authorized agents, at any reasonable time on prior written notice (which may be given by email), may enter and examine and inspect the Project for the purposes of permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

**Section 8.2. Confidentiality.** The County acknowledges that the Sponsor may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques (“*Confidential*

*Information*”) and that disclosure of the Confidential Information could result in substantial economic harm to the Sponsor. The Sponsor may clearly label any Confidential Information delivered to the County pursuant to this Fee Agreement as “*Confidential Information*.” Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Sponsor acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Sponsor with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure, and to cooperate reasonably with any attempts by the Sponsor to obtain judicial or other relief from such disclosure requirement.

### **Section 8.3. Indemnification Covenants.**

(a) Except as provided in paragraph (d) below, the Sponsor shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “*Indemnified Party*”) harmless against and from all liability or claims arising from the County’s execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement or the administration of its duties pursuant to this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement.

(b) The County is entitled to use counsel of its choice and the Sponsor shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a), above. The County shall provide a statement of the costs incurred in the response or defense, and the Sponsor shall pay the County within 30 days of receipt of the statement. The Sponsor may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any such documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Sponsor to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Sponsor shall resist or defend against such claim on behalf of the Indemnified Party, at the Sponsor’s expense. The Sponsor is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Sponsor is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything in this Section or this Fee Agreement to the contrary, the Sponsor is not required to indemnify any Indemnified Party against or reimburse any Indemnified Party for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Fee Agreement, performance of the County’s obligations under this Fee Agreement, or the administration of its duties under this Fee Agreement, or otherwise by virtue of the County having entered into this Fee Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.

(e) An Indemnified Party may not avail itself of the indemnification or reimbursement of costs provided in this Section unless it provides the Sponsor with prompt notice, reasonable under the circumstances, of the existence or threat of any claim or liability, including, without limitation, copies of any citations, orders, fines, charges, remediation requests, or other claims or threats of claims, in order to afford the Sponsor notice, reasonable under the circumstances, within which to defend or otherwise respond to a claim.

(f) The obligations under this Section 8.3 shall survive termination of this Fee Agreement.

**Section 8.4. No Liability of County Personnel.** All covenants, stipulations, promises, agreements and obligations of the County contained in this Fee Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys under this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Fee Agreement or for any claims based on this Fee Agreement may be had against any member of County Council or any elected or appointed official, officer, agent, servant or employee of the County except solely in their official capacity.

**Section 8.5. Limitation of Liability.** The County is not liable to the Sponsor for any costs, expenses, losses, damages, claims or actions in connection with this Fee Agreement, except from amounts received by the County from the Sponsor under this Fee Agreement. Notwithstanding anything in this Fee Agreement to the contrary, any financial obligation the County may incur under this Fee Agreement is deemed not to constitute a pecuniary liability or a debt or general obligation of the County.

**Section 8.6. Assignment.** The Sponsor may assign this Fee Agreement in whole or in part with the prior written consent of the County or a subsequent written ratification by the County, which may be done by resolution, and which consent or ratification the County will not unreasonably withhold. The Sponsor agrees to notify the County and the Department of the identity of the proposed transferee within 60 days of the transfer. In case of a transfer, the transferee assumes the transferor's basis in the Economic Development Property for purposes of calculating the FILOT Payments.

**Section 8.7. No Double Payment; Future Changes in Legislation.** Notwithstanding anything contained in this Fee Agreement to the contrary, and except as expressly required by law, the Sponsor is not required to make a FILOT Payment in addition to a regular *ad valorem* property tax payment in the same year with respect to the same piece of Economic Development Property. The Sponsor is not required to make a FILOT Payment on Economic Development Property in cases where, absent this Fee Agreement, *ad valorem* property taxes would otherwise not be due on such property.

**Section 8.8. Administration Expenses.** The Sponsor will reimburse, or cause reimbursement to, the County for Administration Expenses in the amount of \$[ ]. The Sponsor will reimburse the County for its Administration Expenses on receipt of a written request from the County or at the County's direction, which request shall include a statement of the amount and nature of the Administration Expense. The Sponsor shall pay the Administration Expense as set forth in the written request no later than 60 days following receipt of the written request from the County. The County does not impose a charge in the nature of impact fees or recurring fees in connection with the incentives authorized by this Fee Agreement. The payment by the Sponsor of the County's Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County's choice.

## ARTICLE IX SPONSOR AFFILIATES

**Section 9.1. Sponsor Affiliates.** The Sponsor may designate Sponsor Affiliates from time to time, including at the time of execution of this Fee Agreement, pursuant to and subject to the provisions of Section 12-44-130 of the Act. To designate a Sponsor Affiliate, the Sponsor must deliver written notice to the Economic Development Director identifying the Sponsor Affiliate and requesting the County's approval of the Sponsor Affiliate. Except with respect to a Sponsor Affiliate designated at the time of execution of this Fee Agreement, which may be approved in the County Council ordinance authorizing the execution and delivery of this Fee Agreement, approval of the Sponsor Affiliate may be given by the County Administrator delivering written notice to the Sponsor and Sponsor Affiliate following receipt by the County Administrator of a recommendation from the Economic Development Committee of County



Council to allow the Sponsor Affiliate to join in the investment at the Project. The Sponsor Affiliate's joining in the investment at the Project will be effective on delivery of a Joinder Agreement, the form of which is attached as Exhibit B, executed by the Sponsor Affiliate to the County.

**Section 9.2. Primary Responsibility.** Notwithstanding the addition of a Sponsor Affiliate, the Sponsor acknowledges that it has the primary responsibility for the duties and obligations of the Sponsor and any Sponsor Affiliate under this Fee Agreement, including the payment of FILOT Payments or any other amount due to or for the benefit of the County under this Fee Agreement. For purposes of this Fee Agreement, "primary responsibility" means that if the Sponsor Affiliate fails to make any FILOT Payment or remit any other amount due under this Fee Agreement, the Sponsor shall make such FILOT Payments or remit such other amounts on behalf of the Sponsor Affiliate.

**ARTICLE X  
MISCELLANEOUS**

**Section 10.1. Notices.** Any notice, election, demand, request, or other communication to be provided under this Fee Agreement is effective when delivered to the party named below or when deposited with the United States Postal Service, certified mail, return receipt requested, postage prepaid, addressed as follows (or addressed to such other address as any party shall have previously furnished in writing to the other party), except where the terms of this Fee Agreement require receipt rather than sending of any notice, in which case such provision shall control:

**IF TO THE SPONSOR:**

**WITH A COPY TO (does not constitute notice):**

**IF TO THE COUNTY:**

Richland County, South Carolina  
Attn: Richland County Economic Development Director  
2020 Hampton Street  
Columbia, South Carolina 29204

**WITH A COPY TO (does not constitute notice):**

Parker Poe Adams & Bernstein LLP  
Attn: Ray E. Jones  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202-1509

**Section 10.2. Provisions of Agreement for Sole Benefit of County and Sponsor.** Except as otherwise specifically provided in this Fee Agreement, nothing in this Fee Agreement expressed or implied confers on any person or entity other than the County and the Sponsor any right, remedy, or claim under or

by reason of this Fee Agreement, this Fee Agreement being intended to be for the sole and exclusive benefit of the County and the Sponsor.

**Section 10.3. Counterparts.** This Fee Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 10.4. Governing Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Fee Agreement to the laws of another jurisdiction, governs this Fee Agreement and all documents executed in connection with this Fee Agreement.

**Section 10.5. Headings.** The headings of the articles and sections of this Fee Agreement are inserted for convenience only and do not constitute a part of this Fee Agreement.

**Section 10.6. Amendments.** This Fee Agreement may be amended only by written agreement of the parties to this Fee Agreement.

**Section 10.7. Agreement to Sign Other Documents.** From time to time, and at the expense of the Sponsor, to the extent any expense is incurred, the County agrees to execute and deliver to the Sponsor such additional instruments as the Sponsor may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Fee Agreement to effectuate the purposes of this Fee Agreement.

**Section 10.8. Interpretation; Invalidity; Change in Laws.**

(a) If the inclusion of property as Economic Development Property or any other issue is unclear under this Fee Agreement, then the parties intend that the interpretation of this Fee Agreement be done in a manner that provides for the broadest inclusion of property under the terms of this Fee Agreement and the maximum incentive permissible under the Act, to the extent not inconsistent with any of the explicit terms of this Fee Agreement.

(b) If any provision of this Fee Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Fee Agreement are unimpaired, and the parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Fee Agreement so as to afford the Sponsor with the maximum benefits to be derived under this Fee Agreement, it being the intention of the County to offer the Sponsor the strongest inducement possible, within the provisions of the Act, to locate the Project in the County.

(c) The County agrees that in case the FILOT incentive described in this Fee Agreement is found to be invalid and the Sponsor does not realize the economic benefit it is intended to receive from the County under this Fee Agreement as an inducement to locate in the County, the County agrees to negotiate with the Sponsor to provide a special source revenue or Infrastructure Credit to the Sponsor [(in addition to the Infrastructure Credit explicitly provided for above)] to the maximum extent permitted by law, to allow the Sponsor to recoup all or a portion of the loss of the economic benefit resulting from such invalidity.

**Section 10.9. Force Majeure.** The Sponsor is not responsible for any delays or non-performance caused in whole or in part, directly or indirectly, by strikes, accidents, freight embargoes, fires, floods, inability to obtain materials, conditions arising from governmental orders or regulations, war or national emergency, acts of God, and any other cause, similar or dissimilar, beyond the Sponsor's reasonable control.

**Section 10.10. Termination; Termination by Sponsor.**

(a) Unless first terminated under any other provision of this Fee Agreement, this Fee Agreement terminates on the Final Termination Date.

(b) The Sponsor is authorized to terminate this Fee Agreement at any time with respect to all or part of the Project on providing the County with 30 days' notice.

(c) Any monetary obligations due and owing at the time of termination and any provisions which are intended to survive termination, including specifically the obligations arising under Section 8.3 of this Fee Agreement, survive such termination.

(d) In the year following termination, all Economic Development Property is subject to *ad valorem* taxation or such other taxation or payment in lieu of taxation that would apply absent this Fee Agreement. The Sponsor's obligation to make FILOT Payments under this Fee Agreement terminates to the extent of and in the year following the year the Sponsor terminates this Fee Agreement pursuant to this Section.

**Section 10.11. Entire Agreement.** This Fee Agreement expresses the entire understanding and all agreements of the parties, and neither party is bound by any agreement or any representation to the other party which is not expressly set forth in this Fee Agreement or in certificates delivered in connection with the execution and delivery of this Fee Agreement.

**Section 10.12. Waiver.** Either party may waive compliance by the other party with any term or condition of this Fee Agreement only in a writing signed by the waiving party.

**Section 10.13. Business Day.** If any action, payment, or notice is, by the terms of this Fee Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Fee Agreement, and no interest will accrue in the interim.

**Section 10.14. Agreement's Construction.** Each party and its counsel have reviewed this Fee Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Fee Agreement or any amendments or exhibits to this Fee Agreement.

*[Signature pages follow]*

**IN WITNESS WHEREOF**, the County, acting by and through the County Council, has caused this Fee Agreement to be executed in its name and on its behalf by the Chair of County Council and to be attested by the Clerk of the County Council; and the Sponsor has caused this Fee Agreement to be executed by its duly authorized officer, all as of the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

(SEAL)

By: \_\_\_\_\_  
County Council Chair  
Richland County, South Carolina

**ATTEST:**

By: \_\_\_\_\_  
Clerk to County Council  
Richland County, South Carolina

*[Signature Page 1 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**PROJECT CONNECT**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

*[Signature Page 2 to Fee in Lieu of Ad Valorem Taxes and Incentive Agreement]*

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**[TBD]**

**EXHIBIT B (see Section 9.1)**  
**FORM OF JOINDER AGREEMENT**

Reference is hereby made to the Fee-in-Lieu of *Ad Valorem* Taxes Agreement, effective [ ], 2023 (“Fee Agreement”), between Richland County, South Carolina (“County”) and Project Connect (“Sponsor”).

**1. Joinder to Fee Agreement.**

[\_\_\_\_\_], a [STATE] [corporation]/[limited liability company]/[limited partnership] authorized to conduct business in the State of South Carolina, hereby (a) joins as a party to, and agrees to be bound by and subject to all of the terms and conditions of, the Fee Agreement as if it were a Sponsor [except the following: \_\_\_\_\_]; (b) shall receive the benefits as provided under the Fee Agreement with respect to the Economic Development Property placed in service by the Sponsor Affiliate as if it were a Sponsor [except the following \_\_\_\_\_]; (c) acknowledges and agrees that (i) according to the Fee Agreement, the undersigned has been designated as a Sponsor Affiliate by the Sponsor for purposes of the Project; and (ii) the undersigned qualifies or will qualify as a Sponsor Affiliate under the Fee Agreement and Section 12-44-30(20) and Section 12-44-130 of the Act.

**2. Capitalized Terms.**

Each capitalized term used, but not defined, in this Joinder Agreement has the meaning of that term set forth in the Fee Agreement.

**3. Representations of the Sponsor Affiliate.**

The Sponsor Affiliate represents and warrants to the County as follows:

(a) The Sponsor Affiliate is in good standing under the laws of the state of its organization, is duly authorized to transact business in the State (or will obtain such authority prior to commencing business in the State), has power to enter into this Joinder Agreement, and has duly authorized the execution and delivery of this Joinder Agreement.

(b) The Sponsor Affiliate’s execution and delivery of this Joinder Agreement, and its compliance with the provisions of this Joinder Agreement, do not result in a default, not waived or cured, under any agreement or instrument to which the Sponsor Affiliate is now a party or by which it is bound.

(c) The execution and delivery of this Joinder Agreement and the availability of the FILOT and other incentives provided by this Joinder Agreement has been instrumental in inducing the Sponsor Affiliate to join with the Sponsor in the Project in the County.

**4. Governing Law.**

This Joinder Agreement is governed by and construed according to the laws, without regard to principles of choice of law, of the State of South Carolina.

**5. Notice.**

Notices under Section 10.1 of the Fee Agreement shall be sent to:

[\_\_\_\_\_]

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to be effective as of the date set forth below.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name of Entity  
By: \_\_\_\_\_  
Its: \_\_\_\_\_

IN WITNESS WHEREOF, the County acknowledges it has consented to the addition of the above-named entity as a Sponsor Affiliate under the Fee Agreement effective as of the date set forth above.

**RICHLAND COUNTY, SOUTH CAROLINA**

\_\_\_\_\_  
By: \_\_\_\_\_  
Its: \_\_\_\_\_



**EXHIBIT C (see Section 3.3)**  
**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING**  
**ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,  
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY  
PRACTICES CONCERNING ECONOMIC DEVELOPMENT  
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

**Section 1.** The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

**Section 2.** The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

**Section 3.** A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office  
Attention: Kim Mann  
1201 Main Street, Suite 910  
Columbia, SC 29201

**Section 4.** This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

**Section 5.** The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


**Section 6.** In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA

  
Chair, Richland County Council

(SEAL)  
ATTEST:

  
Clerk to County Council

**EXHIBIT D (see Section 5.1)**  
**DESCRIPTION OF INFRASTRUCTURE CREDIT**

All qualifying investment of the Sponsor during the Investment Period shall qualify for a 40-year, 50% Infrastructure Credit. Beginning with the first annual FILOT Payment and continuing for the next thirty-nine annual FILOT Payments, the Sponsor will receive an annual Infrastructure Credit in an amount equal to 50% of the annual FILOT Payment with respect to the Project.

**EXHIBIT E (see Section 6.1)**  
**DESCRIPTION OF CLAW BACK**

If the Sponsor fails to achieve the Contract Minimum Investment Requirement or the Contract Minimum Jobs Requirement by the end of Investment Period, then the Sponsor shall be required to repay a portion of the Infrastructure Credits received as calculated below and any Infrastructure Credits for which the Company is eligible shall be reduced on a go-forward basis by the Claw Back Percentage calculated below. The Sponsor shall additionally pay to the County a percentage of the value of the Real Property, which the County and Sponsor agree the value Real Property for purposes of the claw back is \$[ ], in the same percentage as the Claw Back Percentage calculated below.

**Repayment Amount = Total Received x Claw Back Percentage**

**Land Repayment Amount = Value of Land x Claw Back Percentage**

**Claw Back Percentage = 100% - Overall Achievement Percentage**

**Overall Achievement Percentage = (Investment Achievement Percentage + Jobs Achievement Percentage) / 2**

**Investment Achievement Percentage = Actual Investment Achieved / Contract Minimum Investment Requirement [may not exceed 100%]**

**Jobs Achievement Percentage = Actual New, Full-Time Jobs Created / Contract Minimum Jobs Requirement [may not exceed 100%]**

In calculating the each achievement percentage, only the investment made or new jobs achieved up to the Contract Minimum Investment Requirement and the Contract Minimum Jobs Requirement will be counted.

*For example, and by way of example only, if the County granted \$5,000,000 in Infrastructure Credits, and \$1,000,000,000 had been invested at the Project, 300 jobs had been created by the end of the Investment Period and the value of the land is [ ] the Repayment Amount and Land Repayment Amount would be calculated as follows:*

*Jobs Achievement Percentage = 300/1000 = 30%*

*Investment Achievement Percentage = \$1,000,000/\$2,000,000 = 50%*

*Overall Achievement Percentage = (30% + 50%)/2 = 40%*

*Claw Back Percentage = 100% - 40% = 60%*

*Repayment Amount = \$5,000,000 x 60% = \$3,000,000*

*Land Repayment Amount = 10,000,000 x 60% = \$6,000,000*

The Sponsor shall pay any amounts described in or calculated pursuant to this Exhibit E within 30 days of receipt of a written statement from the County. If not timely paid by the Sponsor, the amount due is subject to the minimum amount of interest that the law may permit with respect to delinquent *ad valorem* tax payments. The repayment obligation described in this Exhibit E survives termination of this Fee Agreement.

## Richland County Council Request for Action

**Subject:**

Authorizing the expansion of the boundaries of the I-77 Corridor Regional Industrial Park jointly developed with Fairfield County to include certain property located in Richland County; the execution and delivery of a public infrastructure credit agreement to provide for public infrastructure credits to a company identified for the time being as Project Subtext; and other related matters

**Notes:**

First Reading:  
Second Reading:  
Third Reading:  
Public Hearing:

STATE OF SOUTH CAROLINA  
COUNTY COUNCIL FOR RICHLAND COUNTY  
ORDINANCE NO. \_\_\_\_\_

**AUTHORIZING THE EXPANSION OF THE BOUNDARIES OF THE I-77 CORRIDOR REGIONAL INDUSTRIAL PARK JOINTLY DEVELOPED WITH FAIRFIELD COUNTY TO INCLUDE CERTAIN PROPERTY LOCATED IN RICHLAND COUNTY; THE EXECUTION AND DELIVERY OF A PUBLIC INFRASTRUCTURE CREDIT AGREEMENT TO PROVIDE FOR PUBLIC INFRASTRUCTURE CREDITS TO A COMPANY IDENTIFIED FOR THE TIME BEING AS PROJECT SUBTEXT; AND OTHER RELATED MATTERS.**

WHEREAS, Richland County (“County”), acting by and through its County Council (“County Council”), is authorized pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop a multicounty park with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act, to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina (“Fairfield”), the I-77 Corridor Regional Industrial Park (“Park”) and executed the Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park, dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, a company identified for the time being as Project Subtext (the “Company”), has, as part of a commercial development to be located in the County, committed to establish student housing in the County (“Project”) including, and to be located on, land more particularly identified in the Agreement (as hereinafter defined) (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than **[\$85,000,000]**, and in connection with the Project, anticipates making investment in certain Public Infrastructure;

WHEREAS, at the Company’s request, the County desires to expand the boundaries of the Park and to amend the Park Agreement to include the Land and other real and personal property comprising the Project (collectively, the “Property”) in the Park; and

WHEREAS, the City of Columbia, South Carolina, the municipality in which the Property is located, must consent to the expansion of the boundaries of the Park to include the Property in the Park in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, the County further desires to enter into a Public Infrastructure Credit Agreement with the Company, the substantially final form of which is attached as Exhibit A (“Agreement”), to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of

assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions set forth in the Agreement.

NOW THEREFORE, BE IT ORDAINED, by the County Council as follows:

**Section 1.** *Statutory Findings.* Based on representations made by the Company to the County, the County finds that the Project and the Public Infrastructure will enhance the economic development of the County and promote the welfare of its citizens.

**Section 2.** *Expansion of the Park Boundaries; Inclusion of Property.* The expansion of the Park boundaries and an amendment to the Park Agreement to include the Property in the Park is, contingent upon the City of Columbia's consent to such expansion in accordance with Section 4-1-170(C) of the Act, authorized. The Chair of County Council ("Chair") is authorized to execute such documents and take such further actions as may be necessary to complete the expansion of the Park boundaries and the amendment to the Park Agreement. Pursuant to the terms of the Park Agreement, the expansion of the Park's boundaries to include the Property is complete on the adoption of this Ordinance by County Council, receipt of the consent of the City of Columbia as to the inclusion of the Property in the Park, and delivery of written notice to Fairfield of the inclusion of the Property in the Park, which written notice shall include a copy of this Ordinance and identification of the Property.

**Section 3.** *Approval of Public Infrastructure Credit; Authorization to Execute and Deliver Agreement.* The Public Infrastructure Credits, as more particularly set forth in the Agreement, against the Company's Fee Payments with respect to the Project are approved. The form, terms and provisions of the Agreement that is before this meeting are approved and all of the Agreement's terms are incorporated in this Ordinance by reference as if the Agreement was set out in this Ordinance in its entirety. The Chair is authorized and directed to execute the Agreement in the name of and on behalf of the County, subject to the approval of any revisions or changes as are not materially adverse to the County by the County Administrator and counsel to the County, and the Clerk to County Council is hereby authorized and directed to attest the Agreement and to deliver the Agreement to the Company.

**Section 4.** *Further Assurances.* The County Council confirms the authority of the Chair, the County Administrator, the Director of Economic Development and the Clerk to County Council, and various other County officials and staff, acting at the direction of the Chair, the County Administrator, the Director of Economic Development or Clerk to County Council, as appropriate, to take whatever further action and to negotiate, execute and deliver whatever further documents as may be appropriate to effect the intent of this Ordinance and the incentives offered to the Company under this Ordinance and the Agreement.

**Section 5.** *Savings Clause.* The provisions of this Ordinance are separable. If any part of this Ordinance is, for any reason, unenforceable then the validity of the remainder of this Ordinance is unaffected.

**Section 6.** *General Repealer.* Any prior ordinance, the terms of which are in conflict with this Ordinance, is, only to the extent of that conflict, repealed.

**Section 7.** *Effectiveness.* This Ordinance is effective after its third reading and public hearing.

[End of Ordinance]



RICHLAND COUNTY, SOUTH CAROLINA

---

Chair, Richland County Council

(SEAL)  
ATTEST:

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Clerk of Council, Richland County Council

RICHLAND COUNTY ATTORNEY'S OFFICE

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Approved As To LEGAL Form Only  
No Opinion Rendered As To Content

First Reading: February 14, 2023  
Second Reading:  
Public Hearing:  
Third Reading:

**EXHIBIT A**  
**FORM OF AGREEMENT**

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**PUBLIC INFRASTRUCTURE CREDIT AGREEMENT**

**by and between**

**RICHLAND COUNTY, SOUTH CAROLINA**

**and**

**PROJECT SUBTEXT**

**Effective as of: [\_\_\_\_\_, 2023]**

## PUBLIC INFRASTRUCTURE CREDIT AGREEMENT

This PUBLIC INFRASTRUCTURE CREDIT AGREEMENT, effective as of [\_\_\_\_\_, 2023] (“Agreement”), is by and between RICHLAND COUNTY, SOUTH CAROLINA, a body politic and corporate, and a political subdivision of the State of South Carolina (“County”), and a company identified for the time being as PROJECT SUBTEXT (as hereinafter defined “Company” together with the County, “Parties,” each, a “Party”).

### WITNESSETH:

WHEREAS, the County, acting by and through its County Council (“County Council”), is authorized and empowered under and pursuant to the provisions of Article VIII, Section 13(D) of the South Carolina Constitution and the provisions of Title 4, Chapter 1 of the Code of Laws of South Carolina, 1976, as amended (collectively, “Act”), to (i) develop multicounty parks with counties having contiguous borders with the County; and (ii) include property in the multicounty park, which inclusion under the terms of the Act (A) makes such property exempt from *ad valorem* property taxes, and (B) changes the character of the annual receipts from such property to fees-in-lieu of *ad valorem* property taxes in an amount equal to the *ad valorem* taxes that would have been due and payable but for the location of the property in such multicounty park (“Fee Payments”);

WHEREAS, the County is further authorized by Section 4-1-175 of the Act to grant credits against Fee Payments (“Public Infrastructure Credit”) to pay costs of, amongst other things, designing, acquiring, constructing, improving or expanding public infrastructure serving the County (collectively, “Public Infrastructure”);

WHEREAS, pursuant to the authority provided in the Act, the County has developed with Fairfield County, South Carolina, the I-77 Corridor Regional Industrial Park (“Park”) and executed the “Amended and Restated Master Agreement Governing the I-77 Corridor Regional Industrial Park” dated September 1, 2018 (“Park Agreement”), which governs the operation of the Park;

WHEREAS, as part of a commercial development to be located in the County, the Company has committed to establish market rate housing in the County (“Project”) including, and to be located on, land more particularly identified on Exhibit A hereto (“Land”), consisting of total taxable investment by the Company in real and personal property of not less than [\$85,000,000], and in connection with the Project, anticipates making investment in certain Public Infrastructure as further described herein;

WHEREAS, by an ordinance enacted on [\_\_\_\_\_, 2023] (“Ordinance”), the County authorized the expansion of the boundaries of the Park and an amendment to the Park Agreement to include the Land and other real and personal property comprising the Project (“Property”) in the Park, and the City of Columbia, South Carolina consented to such expansion of Park boundaries by an ordinance enacted on [\_\_\_\_\_, 2023] in accordance with Section 4-1-170(C) of the Act; and

WHEREAS, pursuant to the Ordinance, the County further authorized the execution and delivery of this Agreement to provide Public Infrastructure Credits against the Company’s Fee Payments with respect to the Project for the purpose of assisting in paying the costs of certain Public Infrastructure invested by the Company at, in, or in connection with, the Project, subject to the terms and conditions below.

NOW, THEREFORE, in consideration of the respective representations and agreements hereinafter contained, the County and the Company agree as follows:

**ARTICLE I  
REPRESENTATIONS**

**Section 1.1. *Representations by the County.*** The County represents to the Company as follows:

- (a) The County is a body politic and corporate and a political subdivision of the State of South Carolina;
- (b) The County is authorized and empowered by the provisions of the Act to enter into and carry out its obligations under this Agreement;
- (c) The County has duly authorized and approved the execution and delivery of this Agreement by adoption of the Ordinance in accordance with the procedural requirements of the Act and any other applicable state law;
- (d) The County is not in default of any of its obligations (contractual or otherwise) as a result of entering into and performing its obligations under this Agreement;
- (e) The County has approved the inclusion of the Property in the Park; and
- (f) Based on representations made by the Company to the County, the County has determined the Project and the Public Infrastructure, including, but not limited to, the Company Public Infrastructure, as defined below, will enhance the economic development of the County and promote the welfare of its citizens. Therefore, the County is entering into this Agreement for the purpose of promoting the economic development of the County and the welfare of its citizens.

**Section 1.2. *Representations and Covenants by the Company.*** The Company represents to the County as follows:

- (a) The Company is in good standing under the laws of [\_\_\_\_\_] has power to conduct business in the State of South Carolina and enter into this Agreement, and by proper company action has authorized the officials signing this Agreement to execute and deliver it;
- (b) The Company will use commercially reasonable efforts to achieve the Investment Commitment, as defined below, at the Project;
- (c) The Company's execution and delivery of this Agreement, and its compliance with the provisions of this Agreement do not result in a default under any agreement or instrument to which the Company is now a party or by which it is bound; and
- (d) The Company covenants to complete any and all Company Public Infrastructure in a workmanlike manner and in accordance with all applicable codes and regulations.

**ARTICLE II  
PUBLIC INFRASTRUCTURE CREDITS**

**Section 2.1. *Investment Commitment.*** The Company shall invest not less than [**\$85,000,000**] in taxable property in the Project ("Investment Commitment") by [\_\_\_\_\_, **2028**] ("Certification Deadline"). The Company shall certify to the County achievement of the Investment Commitment on a date no later than the Certification Deadline ("Certification Date"), by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, and, only with respect to the personal property portion of the Project, any SCDOR PT-100 filed by the Company with respect to the

Project, to the County's Economic Development Department sufficient to reflect achievement of the Investment Commitment, in form and substance reasonably acceptable to the County. Notwithstanding anything in this Agreement to the contrary, the Certification Date shall not be later than, and may not be extended past, the Certification Deadline. If the Company fails to achieve and so certify the Investment Commitment by the Certification Deadline, the County may terminate this Agreement and, upon any such termination, the Company shall no longer be entitled to any further benefits under this Agreement. Notwithstanding anything in this Agreement to the contrary, the Certification Deadline shall not be later than, and may not be extended past, the last day of the year which is five years after the effective date of this Agreement.

**Section 2.2. Public Infrastructure Commitment.**

(a) Prior to receiving the Public Infrastructure Credits under this Agreement, the Company shall make an investment in Public Infrastructure in the County which may be comprised of any or all of the following improvements and facilities benefitting the public or dedicated to public use: water, sewer, or stormwater improvements, greenspaces, recreation or community facilities, pedestrian or transportation facilities, parking facilities, facade redevelopment, roadway improvements, and energy production or communications technology infrastructure. Public Infrastructure may also include expenditures on the eradication of blight.

(b) In connection with the Project, the Company has committed with commercially reasonable efforts to invest in the Public Infrastructure as described on Exhibit B hereto ("Company Public Infrastructure"). The Company shall certify its actual investment in the Company Public Infrastructure to the County on the Certification Date, by providing documentation, which documentation may include, without limitation, pay applications, invoices, and accounting logs, to the County's Economic Development Department sufficient to reflect the Company's investment in the Company Public Infrastructure, in form and substance reasonably acceptable to the County. If the Company fails to substantially complete the Company Public Infrastructure by the Certification Deadline in the cumulative total investment amount set forth on Exhibit B hereto, then the Company may not be entitled to the full value of the Public Infrastructure Credit as provided by this Agreement.

(c) Following the Certification Date, the County's Economic Development Department shall have 30 days ("Verification Deadline") to verify the Company's investment in the Company Public Infrastructure. The County has the right to exclude from the investment in Company Public Infrastructure certified by the Company any costs the County determines, in its sole discretion, to be ineligible costs. The County may also reject any Company Public Infrastructure investment as ineligible if the County determines, in its sole discretion, that it has not been completed in a workmanlike manner or in accordance with applicable codes or regulations. The County's Economic Development Department shall, on a date no later than the Verification Deadline (the "Verification Date"), provide to the Company, by written notice, the County's determination of the verified amount of Company Public Infrastructure investment. Failure to provide such a written determination by the Verification Deadline shall be deemed to be a determination by the County that all Company Public Infrastructure investment certified by the Company is verified as eligible costs, and, in such event, the Verification Date shall be deemed to be the Verification Deadline.

**Section 2.3. Public Infrastructure Credit.**

(a) To assist in paying for costs of Company Public Infrastructure, the County shall provide a Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project, commencing with the first Fee Payment following the Verification Date. The term, amount and calculation of the Public Infrastructure Credit is described on Exhibit C hereto.

(b) For each tax year for which the Company is entitled to a Public Infrastructure Credit, the County shall prepare and issue the Company's annual Fee Payment bill with respect to the Project net of the Public Infrastructure Credit set forth in **Section 2.3(a)** of this Agreement ("Net Fee Payment"). Following receipt of the bill, the Company shall timely remit the Net Fee Payment to the County in accordance with applicable law.

(c) THIS AGREEMENT AND THE PUBLIC INFRASTRUCTURE CREDITS PROVIDED BY THIS AGREEMENT ARE LIMITED OBLIGATIONS OF THE COUNTY. THE PUBLIC INFRASTRUCTURE CREDITS ARE DERIVED SOLELY FROM AND TO THE EXTENT OF THE FEE PAYMENTS MADE BY THE COMPANY TO THE COUNTY PURSUANT TO THE ACT AND THE PARK AGREEMENT. THE PUBLIC INFRASTRUCTURE CREDITS DO NOT AND SHALL NOT CONSTITUTE A GENERAL OBLIGATION OF THE COUNTY OR ANY MUNICIPALITY WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY LIMITATION AND DO NOT AND SHALL NOT CONSTITUTE OR GIVE RISE TO A PECUNIARY LIABILITY OF THE COUNTY OR ANY MUNICIPALITY OR A CHARGE AGAINST THE GENERAL CREDIT OR TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY. THE FULL FAITH, CREDIT, AND TAXING POWER OF THE COUNTY OR ANY MUNICIPALITY ARE NOT PLEDGED FOR THE PROVISION OF THE PUBLIC INFRASTRUCTURE CREDITS.

(d) The County makes no representation or warranty with respect to the Company Public Infrastructure. The execution and delivery of this Agreement and the extension of the Public Infrastructure Credit do not constitute a commitment by the County to maintain the Company Public Infrastructure.

**Section 2.4. Filings; Administration.** To assist the County in administering the Public Infrastructure Credit, with respect to the Company's Fee Payments due with respect to the personal property portion of the Project, the Company shall, for each tax year corresponding to the Credit Term, as defined on Exhibit C hereto, prepare and file a separate schedule to the SCDOR PT-100 with respect to the personal property portion of the Project. Additionally, the Company shall, on or before January 31 of each year following the commencement of the Credit Term, deliver to the Economic Development Director of the County the information required by the terms of the County's Resolution dated December 12, 2017, which is attached hereto as Exhibit D, as may be amended by subsequent resolution, with respect to the Company.

**Section 2.5 Cumulative Public Infrastructure Credit.** The cumulative dollar amount of the Public Infrastructure Credit shall not exceed the amount invested by the Company in Company Public Infrastructure, as verified, or deemed verified, by the County on or before the Verification Deadline. The County Economic Development Department shall provide the verified investment amount to the County Auditor for purposes of applying the Public Infrastructure Credit in accordance with **Section 2.3** of this Agreement.

### ARTICLE III DEFAULTS AND REMEDIES

**Section 3.1. Events of Default.** The following are "Events of Default" under this Agreement:

(a) Failure by the Company to make a Net Fee Payment, which failure has not been cured within 30 days following receipt of written notice from the County specifying the delinquency in payment and requesting that it be remedied;

(b) An abandonment or closure of the Project; for purposes of this Agreement, "abandonment or closure of the Project" means failure to place all or a portion of the Project in service by December 31, 2028;

(c) A representation or warranty made by the Company which is deemed materially incorrect when deemed made;

(d) Failure by the Company to perform any of the terms, conditions, obligations, or covenants under this Agreement (other than those described in **Sections 2.1** and **2.2** of this Agreement and under **(a)** above), which failure has not been cured within 30 days after written notice from the County to the Company specifying such failure and requesting that it be remedied, unless the Company has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the Company is diligently pursuing corrective action;

(e) A representation or warranty made by the County which is deemed materially incorrect when deemed made; or

(f) Failure by the County to perform any of the terms, conditions, obligations, or covenants hereunder, which failure has not been cured within 30 days after written notice from the Company to the County specifying such failure and requesting that it be remedied, unless the County has instituted corrective action within the 30-day period and is diligently pursuing corrective action until the default is corrected, in which case the 30-day period is extended to include the period during which the County is diligently pursuing corrective action.

### **Section 3.2. Remedies on Default.**

(a) If an Event of Default by the Company has occurred and is continuing, then the County may take any one or more of the following remedial actions:

(i) terminate this Agreement; or

(ii) take whatever action at law or in equity may appear necessary or desirable to collect amounts due or otherwise remedy the Event of Default or recover its damages.

(b) If an Event of Default by the County has occurred and is continuing, the Company may take one or more of the following actions:

(i) bring an action for specific enforcement;

(ii) terminate this Agreement; or

(iii) in case of a materially incorrect representation or warranty, take such action as is appropriate, including legal action, to recover its damages, to the extent allowed by law.

**Section 3.3. Reimbursement of Legal Fees and Other Expenses.** On the occurrence of an Event of Default, if a Party is required to employ attorneys or incur other reasonable expenses for the collection of payments due under this Agreement or for the enforcement of performance or observance of any obligation or agreement, the prevailing Party is entitled to seek reimbursement of the reasonable fees of such attorneys and such other reasonable expenses so incurred.

**Section 3.4. Remedies Not Exclusive.** No remedy described in this Agreement is intended to be exclusive of any other remedy or remedies, and each and every such remedy is cumulative and in addition to every other remedy given under this Agreement or existing at law or in equity or by statute.



**Section 3.5. *Nonwaiver.*** A delay or omission by the Company or County to exercise any right or power accruing on an Event of Default does not waive such right or power and is not deemed to be a waiver or acquiescence of the Event of Default. Every power and remedy given to the Company or County by this Agreement may be exercised from time to time and as often as may be deemed expedient.

#### **ARTICLE IV MISCELLANEOUS**

**Section 4.1. *Examination of Records; Confidentiality.***

(a) The County and its authorized agents, at any reasonable time on prior notice, may enter and examine the Project and have access to and examine the Company's books and records relating to the Project for the purposes of (i) identifying the Project; (ii) confirming achievement of the Investment Commitment; (iii) verifying the investment in the Company Public Infrastructure; and (iv) permitting the County to carry out its duties and obligations in its sovereign capacity (such as, without limitation, for such routine health and safety purposes as would be applied to any other manufacturing or commercial facility in the County).

(b) The County acknowledges that the Company may utilize confidential and proprietary processes and materials, services, equipment, trade secrets, and techniques ("Confidential Information") and that disclosure of the Confidential Information could result in substantial economic harm to the Company. The Company may clearly label any Confidential Information delivered to the County pursuant to this Agreement as "Confidential Information." Except as required by law, the County, or any employee, agent, or contractor of the County, shall not disclose or otherwise divulge any labeled Confidential Information to any other person, firm, governmental body or agency. The Company acknowledges that the County is subject to the South Carolina Freedom of Information Act, and, as a result, must disclose certain documents and information on request, absent an exemption. If the County is required to disclose any Confidential Information to a third party, the County will use its best efforts to provide the Company with as much advance notice as is reasonably possible of such disclosure requirement prior to making such disclosure and to cooperate reasonably with any attempts by the Company to obtain judicial or other relief from such disclosure requirement.

**Section 4.2. *Assignment.*** The Company may assign or otherwise transfer any of its rights and interests in this Agreement on prior written consent of the County, which may be given by resolution, and which consent will not be unreasonably conditioned, withheld, or delayed. Notwithstanding the foregoing, any assignment of this Agreement, in whole or in part, to an affiliated entity of the Company is hereby approved without any further action of the County Council. The County's Director of Economic Development must receive notice of any assignment to an affiliated entity of the Company. For purposes of this Agreement, "affiliated entity" shall mean any corporation, limited liability company, partnership or other person or entity which now or hereafter owns all or part of the Company or which is now or hereafter owned in whole or in part by the Company, or by any partner, shareholder or owner of the Company, and shall also include any subsidiary, affiliate or other person, individual, or entity who now or hereafter bears a relationship to the Company as described in Section 267(b) of the Internal Revenue Code.

**Section 4.3. *Provisions of Agreement for Sole Benefit of County and Company.*** Except as otherwise specifically provided in this Agreement, nothing in this Agreement expressed or implied confers on any person or entity other than the County and the Company any right, remedy, or claim under or by reason of this Agreement, this Agreement being intended to be for the sole and exclusive benefit of the County and the Company.

**Section 4.4. Severability.** If any provision of this Agreement is declared illegal, invalid, or unenforceable for any reason, the remaining provisions of this Agreement are unimpaired, and the Parties shall reform such illegal, invalid, or unenforceable provision to effectuate most closely the legal, valid, and enforceable intent of this Agreement.

**Section 4.5. Limitation of Liability.**

(a) The County is not liable to the Company for any costs, expenses, losses, damages, claims or actions in connection with this Agreement, except from amounts received by the County from the Company under this Agreement.

(b) All covenants, stipulations, promises, agreements and obligations of the County contained in this Agreement are binding on members of the County Council or any elected official, officer, agent, servant or employee of the County only in his or her official capacity and not in his or her individual capacity, and no recourse for the payment of any moneys or performance of any of the covenants and agreements under this Agreement or for any claims based on this Agreement may be had against any member of County Council or any elected official, officer, agent, servant or employee of the County except solely in their official capacity.

(c) The County is not responsible for the Company Public Infrastructure and disclaims all liability with respect to the Company Public Infrastructure.

**Section 4.6. Indemnification Covenant.**

(a) Except as provided in paragraph (d) below, the Company shall indemnify and save the County, its employees, elected officials, officers and agents (each, an “Indemnified Party”) harmless against and from all liability or claims arising from the County’s execution of this Agreement, performance of the County’s obligations under this Agreement or the administration of its duties pursuant to this Agreement, or otherwise by virtue of the County having entered into this Agreement.

(b) The County is entitled to use counsel of its choice and the Company shall reimburse the County for all of its costs, including attorneys’ fees, incurred in connection with the response to or defense against such liability or claims as described in paragraph (a) above. The County shall provide a statement of the costs incurred in the response or defense, and the Company shall pay the County within 30 days of receipt of the statement. The Company may request reasonable documentation evidencing the costs shown on the statement. However, the County is not required to provide any documentation which may be privileged or confidential to evidence the costs.

(c) The County may request the Company to resist or defend against any claim on behalf of an Indemnified Party. On such request, the Company shall resist or defend against such claim on behalf of the Indemnified Party, at the Company’s expense. The Company is entitled to use counsel of its choice, manage and control the defense of or response to such claim for the Indemnified Party; provided the Company is not entitled to settle any such claim without the consent of that Indemnified Party.

(d) Notwithstanding anything herein to the contrary, the Company is not required to indemnify any Indemnified Party against or reimburse the County for costs arising from any claim or liability (i) occasioned by the acts of that Indemnified Party, which are unrelated to the execution of this Agreement, performance of the County’s obligations under this Agreement, or the administration of its duties under this Agreement, or otherwise by virtue of the County having entered into this Agreement; or (ii) resulting from that Indemnified Party’s own negligence, bad faith, fraud, deceit, or willful misconduct.



“Administration Expenses” means the reasonable expenses incurred by the County in the negotiation, approval and implementation of the terms and provisions of this Agreement, including reasonable attorneys’ fees. Administration Expenses do not include any costs, expenses, including attorneys’ fees, incurred by the County (i) in defending challenges to the Fee Payments or Public Infrastructure Credits brought by third parties or the Company or its affiliates and related entities, or (ii) in connection with matters arising at the request of the Company outside of the immediate scope of this Agreement, including amendments to the terms of this Agreement. The payment by the Company of the County’s Administration Expenses shall not be construed as prohibiting the County from engaging, at its discretion, the counsel of the County’s choice.

**Section 4.9. Entire Agreement.** This Agreement expresses the entire understanding and all agreements of the Parties with each other, and neither Party is bound by any agreement or any representation to the other Party which is not expressly set forth in this Agreement or in certificates delivered in connection with the execution and delivery of this Agreement.

**Section 4.10. Agreement to Sign Other Documents.** From time to time, and at the expense of the Company, to the extent any expense is incurred, the County agrees to execute and deliver to the Company such additional instruments as the Company may reasonably request and as are authorized by law and reasonably within the purposes and scope of the Act and this Agreement to effectuate the purposes of this Agreement.

**Section 4.11. Agreement’s Construction.** Each Party and its counsel have reviewed this Agreement and any rule of construction to the effect that ambiguities are to be resolved against a drafting party does not apply in the interpretation of this Agreement or any amendments or exhibits to this Agreement.

**Section 4.12. Applicable Law.** South Carolina law, exclusive of its conflicts of law provisions that would refer the governance of this Agreement to the laws of another jurisdiction, governs this Agreement and all documents executed in connection with this Agreement.

**Section 4.13. Counterparts.** This Agreement may be executed in any number of counterparts, and all of the counterparts together constitute one and the same instrument.

**Section 4.14. Amendments.** This Agreement may be amended only by written agreement of the Parties.

**Section 4.15. Waiver.** Either Party may waive compliance by the other Party with any term or condition of this Agreement but the waiver is valid only if it is in a writing signed by the waiving Party.

**Section 4.16. Termination.** Unless first terminated under any other provision of this Agreement, this Agreement terminates on the expiration of the Credit Term and payment by the Company of any outstanding Net Fee Payment due on the Project pursuant to the terms of this Agreement.

**Section 4.17. Business Day.** If any action, payment, or notice is, by the terms of this Agreement, required to be taken, made, or given on any Saturday, Sunday, or legal holiday in the jurisdiction in which the Party obligated to act is situated, such action, payment, or notice may be taken, made, or given on the following business day with the same effect as if taken, made or given as required under this Agreement, and no interest will accrue in the interim.

[TWO SIGNATURE PAGES FOLLOW]

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, Richland County, South Carolina, has caused this Agreement to be executed by the appropriate officials of the County and its corporate seal to be affixed and attested, effective the day and year first above written.

**RICHLAND COUNTY, SOUTH CAROLINA**

---

Chair, Richland County Council

(SEAL)  
ATTEST:

---

Clerk to Council, Richland County Council

*[SIGNATURE PAGE 1 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]*

IN WITNESS WHEREOF, Project Subtext has caused this Agreement to be executed by its authorized officer(s), effective the day and year first above written.

**PROJECT SUBTEXT**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

*[SIGNATURE PAGE 2 TO PUBLIC INFRASTRUCTURE CREDIT AGREEMENT]*

**EXHIBIT A**

**LAND DESCRIPTION**

**[\*Legal description to be modified, and Tax Map Number to be inserted, following third reading.]**



**EXHIBIT B** (See Section 2.2)

**DESCRIPTION OF COMPANY PUBLIC INFRASTRUCTURE**

The Company Public Infrastructure includes a structured parking garage featuring approximately 500 parking spaces; the Company anticipates that such parking garage will include parking for residents, employees, as well as commercial/retail parking spaces. In addition to the structured parking garage, the Company Public Infrastructure will consist of extensive streetscape improvements, including the construction or restoration of sidewalks and pedestrian street lighting improvements. The anticipated total cost of the Company Public Infrastructure is approximately \$9,711,432 and is further detailed below:

<b>Type</b>	<b>Investment</b>
Parking Structure	\$8,811,432
ROW Improvements (sidewalks & landscaping)	\$350,000
Burial of Overhead Power Lines	\$400,000
Pedestrian Style Street Lighting	\$150,000

Notwithstanding anything above or in this Agreement to the contrary, the Company and the County acknowledge and agree that: (i) the Company Public Infrastructure shall, subject to the provisions of **Section 2.2(c)** of this Agreement, include, in addition to that described and delineated above, any Public Infrastructure invested in by the Company in connection with the Project and consisting of improvements or infrastructure included within the description of Public Infrastructure set forth in **Section 2.2** of this Agreement; and, (ii) the specific line item budget amounts listed above are current estimates and the actual expenditures made by the Company with respect to each such line item may fluctuate as the Project develops.

**EXHIBIT C (See Section 2.3)**

**DESCRIPTION OF PUBLIC INFRASTRUCTURE CREDIT**

The County shall provide a 50% Public Infrastructure Credit against the Fee Payments due and owing from the Company to the County with respect to the Project as provided in this Agreement, provided, the cumulative total amount of the Public Infrastructure Credit shall not exceed the Company's investment in the Company Public Infrastructure.

The Company is eligible to receive the Public Infrastructure Credit against each of the Company's Fee Payments due with respect to the Project for a period of 10 consecutive years, beginning with the first such Fee Payment due with respect to the Project following the Verification Date and ending on the earlier of the 10<sup>th</sup> year or the year in which the cumulative total amount of the Public Infrastructure Credit equals the Company's investment in the Company Public Infrastructure ("Credit Term").

**EXHIBIT D (See Section 2.4)**

**RICHLAND COUNTY RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY PRACTICES CONCERNING  
ECONOMIC DEVELOPMENT PROJECTS IN THE COUNTY**

See attached.

**A RESOLUTION TO AMEND THE DECEMBER 21, 2010,  
RESOLUTION REQUIRING CERTAIN ACCOUNTABILITY  
PRACTICES CONCERNING ECONOMIC DEVELOPMENT  
PROJECTS IN RICHLAND COUNTY**

WHEREAS, Richland County Council adopted a resolution dated as of December 21, 2010 (“Prior Resolution”), which requires companies receiving economic development incentives from Richland County, South Carolina (“County”) to submit annual reports to the Richland County Economic Development Office; and

WHEREAS, the County desires to make the form of the annual reports submitted by such companies uniform in order to make the substantive information contained in the annual reports more easily tracked and documented by the Richland County Economic Development Office.

NOW, THEREFORE, BE IT RESOLVED by Richland County Council as follows:

**Section 1.** The County affirms that each company awarded an incentive by the County in exchange for the location or expansion of a facility or facilities within the County shall submit an annual report to the Richland County Economic Development Office by January 31 of each year throughout the term of the incentives.

**Section 2.** The Richland County Economic Development Office is authorized to create (and from time to time, if necessary, amend or recreate) and make available the form of the annual report; however, such form, shall require, at a minimum, the following information:

- a. Name of company;
- b. Cumulative capital investment (less any removed investment) to date as a result of the project;
- c. Net jobs created to date as a result of the project;

**Section 3.** A copy of the then-current form of the annual report may be obtained from the following address. The annual report shall likewise be submitted to the following address by the required date.

Richland County Economic Development Office  
Attention: Kim Mann  
1201 Main Street, Suite 910  
Columbia, SC 29201

**Section 4.** This Resolution amends the Prior Resolution and sets forth the County’s requirements with respect to the annual reports to be submitted by each company awarded an incentive by the County as described in Section 1.

**Section 5.** The substance of this Resolution shall be incorporated into the agreement between the County and each company with respect to the incentives granted by the County to the company.


**Section 6.** In the event that any company shall fail to submit an annual report, or any portion thereof, such company may be required to return all incentives, or a dollar amount equal thereof, to the County. Such incentives, or the dollar amount equal thereto, shall be paid to the County within 60 days after the date upon which the information was originally due.

RESOLVED: December 12 2017

RICHLAND COUNTY, SOUTH CAROLINA

  
Chair, Richland County Council

(SEAL)  
ATTEST:

  
Clerk to County Council

## Richland County Council Request for Action

**Subject:**

Blythewood Road Widening Award of Construction

**Notes:**

February 7, 2023 – The Transportation Ad Hoc Committee recommended Council award the construction contract to the lowest responsive, responsible bidder, Cherokee, Inc., in the amount of \$10,061,778.01, with a 10% contingency in the amount of \$1,006,177.80 to cover costs related to unforeseen conditions, for a total to be managed by staff of \$11,067,95.81.



**Agenda Briefing**

<b>Prepared by:</b>	Michael Maloney, PE	<b>Title:</b>	Interim Director
<b>Department:</b>	Transportation	<b>Division:</b>	
<b>Date Prepared:</b>	January 17, 2023	<b>Meeting Date:</b>	February 7, 2023
<b>Legal Review</b>	Patrick Wright via email	<b>Date:</b>	January 19, 2023
<b>Budget Review</b>	Abhijit Deshpande via email	<b>Date:</b>	January 31, 2023
<b>Finance Review</b>	Stacey Hamm via email	<b>Date:</b>	January 31, 2023
<b>Approved for consideration:</b>	Assistant County Administrator	John M. Thompson, Ph.D., MBA, CPM, SCEM	
<b>Meeting/Committee</b>	Transportation Ad Hoc		
<b>Subject</b>	Blythewood Road Widening Award of Construction		

**RECOMMENDED/REQUESTED ACTION:**

Staff recommends the award of the construction contract to the lowest responsive, responsible bidder, Cherokee, Inc., in the amount of \$10,061,778.01.

Staff requests a 10% contingency in the amount of \$1,006,177.80 to cover costs related to unforeseen conditions, for a total to be managed by staff of \$11,067,955.81.

Request for Council Reconsideration:  Yes

**FIDUCIARY:**

Are funds allocated in the department’s current fiscal year budget?	<input checked="" type="checkbox"/>	Yes	<input type="checkbox"/>	No
If not, is a budget amendment necessary?	<input type="checkbox"/>	Yes	<input type="checkbox"/>	No

**ADDITIONAL FISCAL/BUDGETARY MATTERS TO CONSIDER:**

Professional Services remaining	\$1,250,188
Construction Costs	\$11,067,956;
Total Cost Remaining	\$12,318,144

*Applicable department/grant key and object codes:*

**Contributing Funding Sources:**

Blythewood Widening	\$9,887,178	key 13320004,R2301388 and balance from 532200
Blythewood Road SUP	\$402,526	key 13330357, 532200
Blythewood Area Imp	2,028,440	key 13320003, 530100

The contributing funds have been a requirement for the overall funding of this project following the descoping of Blythewood Area Improvements; unused funding from that project will transfer to this widening project. The shared use path funding aids in the shared use paths for this widening project. The overall cost is 6% greater than the reported estimate from 2019.

**OFFICE OF PROCUREMENT & CONTRACTING FEEDBACK:**

Please refer to Attachment 2.

**COUNTY ATTORNEY’S OFFICE FEEDBACK/POSSIBLE AREA(S) OF LEGAL EXPOSURE:**

There are no legal concerns regarding this matter.

**REGULATORY COMPLIANCE:**

None applicable.

**MOTION OF ORIGIN:**

There is no associated Council motion of origin.

Council Member	
Meeting	
Date	

**STRATEGIC & GENERATIVE DISCUSSION:**

The project widens Blythewood Road from the intersection with I-77 to the intersection with Syrup Mill Road (approx. 0.8 miles). The existing facility is 2 lanes and will be widened to 4 lanes with a 15’ center turning median and a 10’ wide concrete shared-use-path with curb & gutter on both sides of Blythewood Road. Additionally, this project will include the construction of a multilane round-a-bout at the entrance of Cobblestone Park. The center turning median will be flush with the exception of the raised concrete median between the round-a-bout and the I-77 ramps. Locklier Road will also be realigned to better tie in with the new round-a-bout.

**ASSOCIATED STRATEGIC GOAL, OBJECTIVE, AND INITIATIVE:**

This award commits to action Goal 3 of the strategic plan - commit to fiscal responsibility. The project is an example of an initiative that aligns with the available resources.

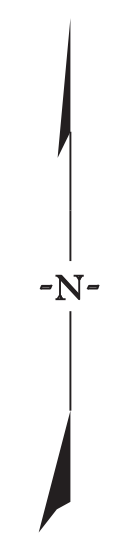
**ATTACHMENTS:**

1. Site Overview
2. Recommendation Letter



FED. RD. DIV. NO.	STATE	COUNTY	PROJECT ID	ROAD/ROUTE NO.	SHEET NO.
3	S.C.	RICHLAND	P030152	S-59	4A

BLYTHEWOOD ROAD RELOC.



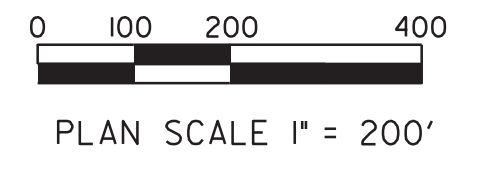
p:\parrish-pw\parrish-pw\Documents\Surface Transportation\BlytheWood Road Widening\Roadway\Sheets\BLYTHEWOOD\_PSM\_SHT\_4A.dgn  
1/7/2019



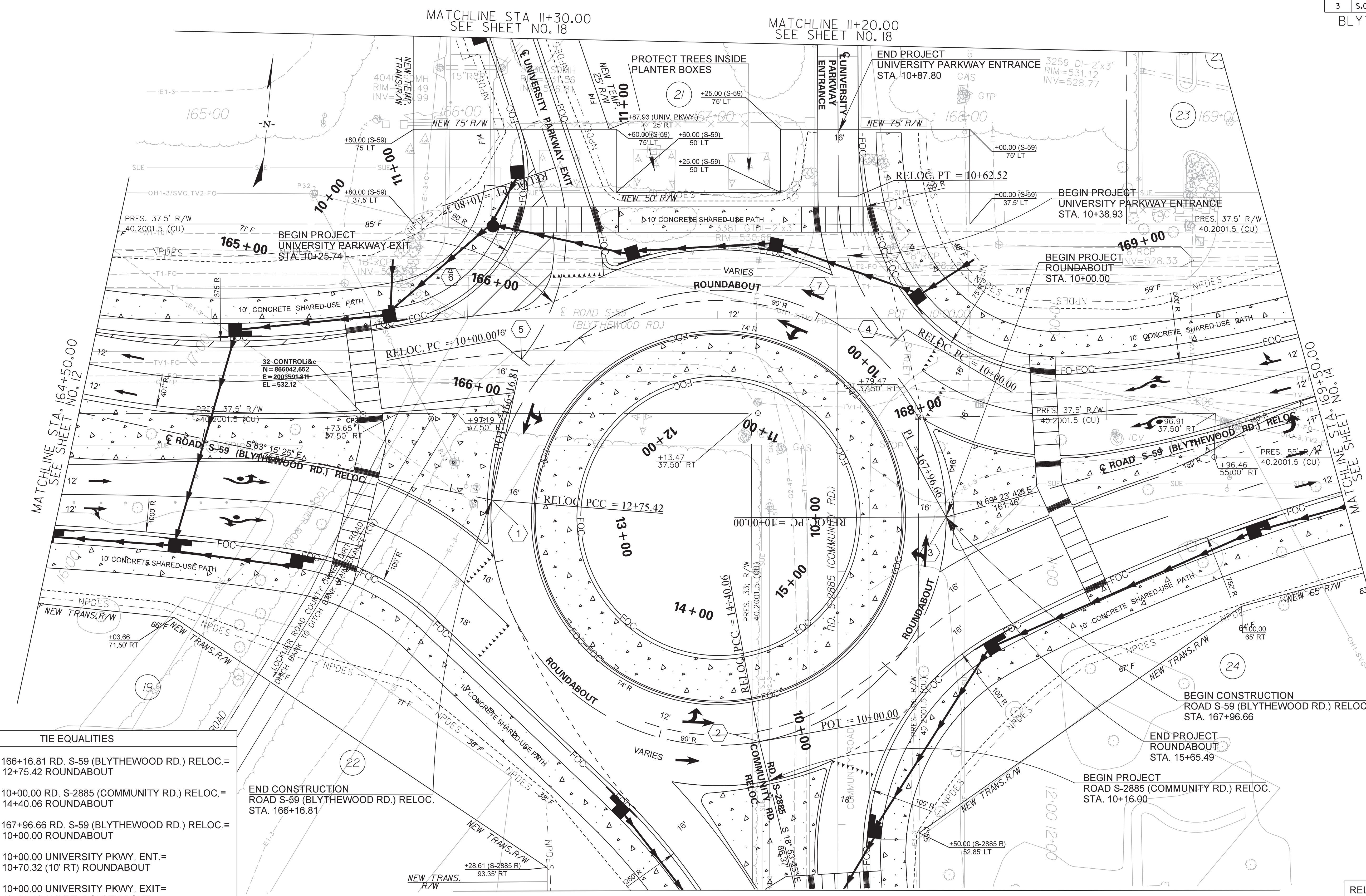
7			
6			
5			
4			
3			
2	G. RIKARD	4/16/19	TRACT I3 - REVISED NEW R/W
1	G. RIKARD	4/1/2019	ADDED TRACT 25A
REV. NO.	BY	DATE	DESCRIPTION OF REVISION



DESIGNED BY _____ DATE _____	
DRAWN BY _____ DATE _____	
CHECKED BY _____ DATE _____	



RICHLAND COUNTY  
TRANSPORTATION PENNY PROGRAM  
S-59 (BLYTHEWOOD RD.)  
WIDENING  
PROPERTY STRIP MAP



TIE EQUALITIES

- 1 POT STA. 166+16.81 RD. S-59 (BLYTHEWOOD RD.) RELOC. = POC STA. 12+75.42 ROUNDABOUT
- 2 POT STA. 10+00.00 RD. S-2885 (COMMUNITY RD.) RELOC. = POC STA. 14+40.06 ROUNDABOUT
- 3 POT STA. 167+96.66 RD. S-59 (BLYTHEWOOD RD.) RELOC. = POC STA. 10+00.00 ROUNDABOUT
- 4 POC STA. 10+00.00 UNIVERSITY PKWY. ENT. = POC STA. 10+70.32 (10' RT) ROUNDABOUT
- 5 POC STA. 10+00.00 UNIVERSITY PKWY. EXIT = POC STA. 12+21.46 (10' RT) ROUNDABOUT
- 6 POC STA. 166+01.24 RD. S-59 (BLYTHEWOOD RD.) = POS STA. 17+65.29 LOCKLIER RD.
- 7 POC STA. 167+47.41 RD. S-59 (BLYTHEWOOD RD.) = POC STA. 10+00.00 RD. S-2885 (COMMUNITY RD.)

END CONSTRUCTION  
ROAD S-59 (BLYTHEWOOD RD.) RELOC.  
STA. 166+16.81

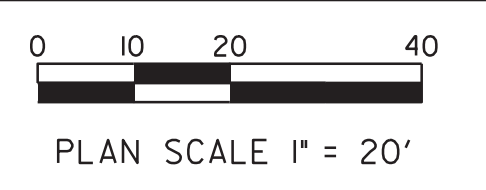
RELOCATE CENTERLINE BETWEEN  
STA. 141+10.81 AND STA. 174+93.09

ALIGNMENT CONTROL CAN BE FOUND ON REFERENCE SHEET

7			
6			
5			
4			
3			
2			
1			
REV. NO.	BY	DATE	DESCRIPTION OF REVISION



DESIGNED BY	DATE
DRAWN BY	DATE
CHECKED BY	DATE



RICHLAND COUNTY  
TRANSPORTATION PENNY PROGRAM

S-59 (BLYTHEWOOD RD.)  
WIDENING  
ROADWAY PLAN  
S-59 (BLYTHEWOOD RD.) RELOC.  
STA. 164+50.00 TO STA. 169+50.00

DWG. NO. 13

p:\parrish-pw\benley.com\parrish-pw\Documents\Surface Transportation\Blythwood Road Widening\Roadway\Sheets\BLYTHEWOOD\_P&P.dgn 1/17/2019

**RICHLAND COUNTY GOVERNMENT  
PROCUREMENT DEPARTMENT**

2020 Hampton Street, Suite 3064, Columbia, SC 29204  
T 803-576-2130 | F 803-576-2135  
richlandcountysc.gov

Attachment 2



December 16, 2022

To: Mr. Michael Maloney, Interim Director of Transportation

From: Vernon Lee Daniels, Buyer

CC: Mrs. Jennifer Wladischkin, Procurement Director, Ms. Erica Wade, OSBO Manager, Mr. Michael P. Green, Project Manager

Re: RC-556-B-23 Blythewood Road Widening Project

A bid opening was conducted at 2:00 PM on Thursday, December 15, 2022, via the County's online procurement portal. Procurement has reviewed the two (2) submitted bids for Blythewood Road Widening Project which was submitted via Bonfire and found no discrepancies. The bid received were as follows:

<b>Blythewood Road Widening Project - BID RESULTS SUMMARY</b>	
<b>BIDDER</b>	<b>SUBMITTED BID</b>
<b>Cherokee, Inc.</b>	<b>\$10,061,778.01</b>
McClam and Associates Inc.	\$11,569,198.85

Further review shows that Cherokee, Inc. is duly licensed in South Carolina to perform this work. A copy of their license is attached.

A Non-Mandatory Pre-Bid Conference was held at 10:00 AM on November 16, 2022, during which attendees gained information and bidding directives for the project. See attached sign-in log.

Attached is a final bid tab sheet for your reference which indicated Cherokee, Inc.'s bid is 19% higher than the Engineer's Estimate of \$8,429,324.38 dated February 28, 2022. The SLBE goal for this project is 13% which the Cherokee, Inc. also committed to.

Provided that Transportation can provide the additional funding, it is Procurement's recommendation that a contract be awarded to the lowest responsive and responsible bidder, Cherokee, Inc., to include a 15% construction contingency of **\$1,509,266.70**.

RC-556-B-23 Blythewood Road Widening Project  
DUE DATE 12/15/2022 2:00 PM

Total Cost	McClam and Associates Inc.	Cherokee, Inc
	\$11,569,198.85	\$10,061,778.01

Print this

**B o**

**ard: Commercial Contractors**

**O KCHER EE INC**

6928 CHEVAL STREET  
COLUMBIA, SC 29209  
(800) 776-4870

**License number:** 12263  
**License type:** GENERAL CONTRACTOR  
**Status:** ACTIVE  
**Expiration:** 10/31/2024  
**First Issuance Date:** 01/01/1992  
**Classification:**  
Gr din -GD5  
Hi hw y Incid nt I-HI5  
Wat r & S w r Lin s-WL5

**Qualified By:** Sur ty Bond  
**President / wner:** JOHN R JORDAN JR

[Click here for Classification definitions and licensee's contract dollar limit](#)

**Supervised By**  
**JORDAN JOHN (CQG)**

[File a Complaint against this licensee](#)

**ard Public Action History: 0**

No Orders Found

**RICHLAND COUNTY GOVERNMENT OFFICE OF PROCUREMENT AND CONTRACTING  
2020 HAMPTON STREET, SUITE 3064, COLUMBIA, SC 29204-1002**

<b>Project #:</b> RC-556-B-23	<b>Project Name:</b> Blythewood Road Widening Project	<b>Date:</b> 11/16/2022
		<b>Time:</b> 10:00AM

COMPANY NAME	REPRESENTATIVE	EMAIL ADDRESS	TELEPHONE/FAX
Richland County- Procurement	Vernon Lee Daniels – Buyer		2134
Richland County - Procurement	Jennifer Wladischkin – Director Procurement		
Richland County - Transportation	Michael Green – Project Manager		
Richland County - OSBO	Erica Wade – Manager OSBO		
Richland County - Transportation	Alex Spartan – Senior Inspector		
Cherokee	John Jordan		
Palmetto Corp	Lou Almonte		
	Brad Flowers		
C.R. Jackson, Inc.	Austin Sarokas		
Cameron Nations/Parrish and Partners	John McCarter		
Mattlane Construction	Lauren Matthews		
Cameron Nations/Parrish and Partners	Josh Hebbard		
Universal Civil Construction	Michael Christie		

\*\*\*\*\* PLEASE PRINT CLEARLY! IF THE INFORMATION IS NOT LEGIBLE YOUR ATTENDANCE MAY NOT BE CONSIDERED! \*\*\*\*\*



## **REQUEST OF ACTION**

**Subject:** FY23 - District 9 Hospitality Tax Allocations

### **A. Purpose**

County Council is being requested to approve a total allocation of **\$3,000** for District 9.

### **B. Background / Discussion**

For the 2022 - 2023 Fiscal Year, County Council approved designating the Hospitality Discretionary account funding totaling \$82,425.00 for each district Council member. The details of these motions are listed below:

**Motion List (3<sup>rd</sup> reading) for FY17:** Hospitality Tax discretionary account guidelines are as follows: (a) Establish a H-Tax discretionary account for each Council District; (b) Fund the account at the amount of \$164,850.00; (c) Council members will recommend Agencies to be funded by their allocation. Agencies and projects must meet all of the requirements in order to be eligible to receive H-Tax funds; (d) All Council recommendation for appropriations of allocations to Agencies after the beginning of the fiscal year will still be required to be taken back to Council for approval by the full Council prior to the commitment of funding. This would only require one vote.

**Motion List (3<sup>rd</sup> reading) for FY23, Regular Council Meeting – June 7, 2022:** Establish Hospitality Tax discretionary accounts for each district in FY23 at the amount of \$82,425. Move that all unallocated district specific H-Tax funding for FY21-22 be carried over and added to any additional funding for FY22-23.

Pursuant to Budget Memorandum 2017-1 and the third reading of the budget for FY23 each district Council member was approved \$82,425.00 to allocate funds to Hospitality Tax eligible organizations of their own discretion. As it relates to this request, District 9 H-Tax discretionary account breakdown and its potential impact is listed below:

Initial Discretionary Account Funding				\$ 82,425
FY2022 Remaining				\$175,400
	Richland	County	Recreation	\$ 3,000
	Foundation			
<b>Total Allocation</b>				<b>\$ 3,000</b>
<b>Remaining FY2023 Balance</b>				<b>\$232,325</b>

**C. Legislative / Chronological History**

- 3<sup>rd</sup> Reading of the Budget – June 8, 2017
- Regular Session - May 15, 2018
- 3<sup>rd</sup> Reading of the Budget FY19- June 21, 2018
- 3<sup>rd</sup> Reading of the Budget FY20- June 10, 2019
- 3<sup>rd</sup> Reading of the Budget FY21- June 11, 2020
- 3<sup>rd</sup> Reading of the Budget FY22- June 10, 2021
- 3<sup>rd</sup> Reading of the Budget FY23- June 7, 2022

**D. Alternatives**

1. Consider the request and approve the allocation.
  
2. Consider the request and do not approve the allocation.

**E. Final Recommendation**

Staff does not have a recommendation regarding this as it is a financial policy decision of County Council. The funding is available to cover the request. Staff will proceed as directed.